

Congress of the United States
House of Representatives
Washington, DC 20515

October 30, 2013

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Room 300, Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy:

Nearly eight years ago, Congress approved the Energy Policy Act of 2005, establishing the first Renewable Fuel Standard ("RFS"). In 2007, Congress significantly expanded the 2005 law when it passed the Energy Independence and Security Act of 2007, which increased the mandate to 36 billion gallons of biofuels by 2022. Unfortunately, despite the best intentions of the RFS, its premise and structure were based on many assumptions that no longer reflect the current market conditions, and the imposition of the 2014 volumes now threatens to cause economic and environmental harm. As Congress continues its bi-partisan work to address these concerns, we are writing to request that the EPA use its authority to adjust the 2014 RFS volumes.

As you are aware, the U.S. corn market has been increasingly volatile since the expansion of the RFS in 2007. This reflects the reality that more than 40 percent of the corn crop now goes into ethanol production, a dramatic rise since the first ethanol mandates were put into place in 2005. While well intentioned, the rigid nature of the federal law has not allowed it to change as new realities emerge in the market place. Ethanol now consumes more corn than animal agriculture, a fact directly attributable to the federal mandate. Corn prices are just one example of the economic harm caused by the RFS.

Due to the dramatic expansion of corn ethanol, volatile corn prices have led to the conversion of millions of acres of sensitive wetlands and grasslands into production. According to the EPA's analysis, the lifecycle emissions of corn ethanol in 2012 were higher than those of gasoline – and will be for years to come. Despite promised environmental benefits when the RFS was implemented, the National Academy of Sciences has noted that overall ethanol production and use lowers air and water quality.

Perhaps the newest challenge is the imposition of the statutory requirement of 18.15 billion gallons of renewable fuels in 2014, of which approximately 14.4 billion gallons will be made up by corn ethanol. In particular, the combination of rising ethanol mandates and declining gasoline demand has exacerbated the onset of the E10 blendwall- the point at which the gasoline supply is saturated with the maximum amount of ethanol that current vehicles, engines, and infrastructure can safely accommodate. The EPA explicitly acknowledged this challenge in its final rule implementing the 2013 volumes—"EPA does not currently foresee a scenario in which the market could consume enough ethanol sold in blends greater than E10, and/or produce sufficient volumes of non-ethanol biofuels to meet the volumes of total renewable fuel and advanced biofuel as required by statute for 2014."¹ We understand that the EPA signaled its intention to address these concerns in the 2014 rulemaking and commend the EPA's willingness to use the authority Congress granted to it when crafting the RFS.

While the blendwall is a pressing issue, the federal government can help avoid a dangerous economic situation by adjusting the normally rigid Renewable Fuel Standard mandate down to align with gasoline market conditions and realities. We therefore urge the EPA to consider a fair and meaningful nationwide adjustment to the ethanol mandate in the Renewable Fuel Standard. Prompt action by the EPA can help to ease short supply concerns, prevent engine damage, save jobs across many U.S. industries, and keep families fed. We strongly urge you to exercise your authority and take the necessary steps to protect American consumers and the economy. Thank you for your immediate consideration of this request.


Sincerely,



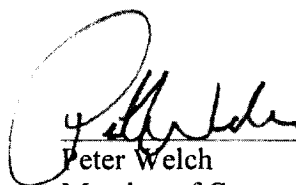
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Jim Costa
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Steve Womack
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¹ Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards, 78 Fed. Reg. 49,794, 49,823 (Aug. 15, 2013) (to be codified at 40 C.F.R. pt. 80).



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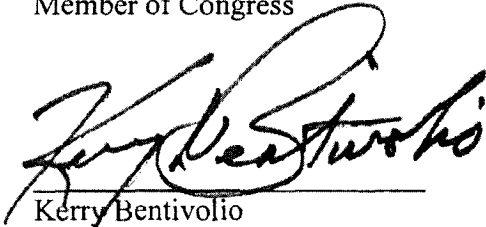
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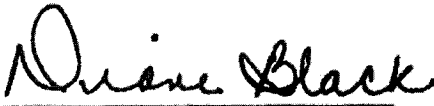
Dan Benishek
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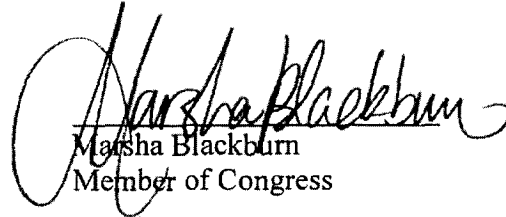
Kerry Bentivolio
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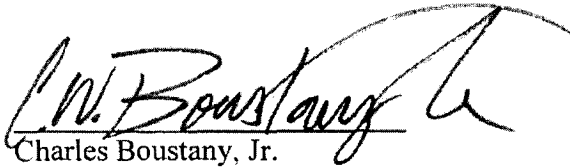
Gus Bilirakis
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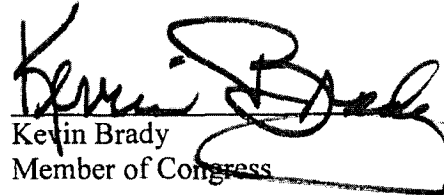
Diane Black
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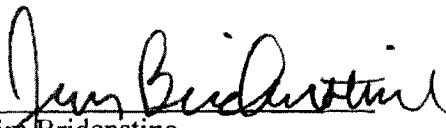
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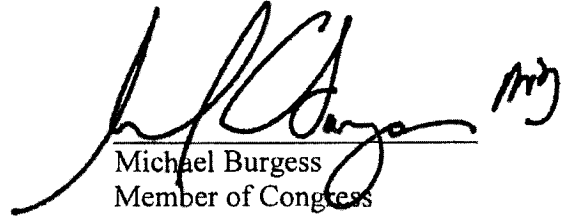
Jim Bridenstine
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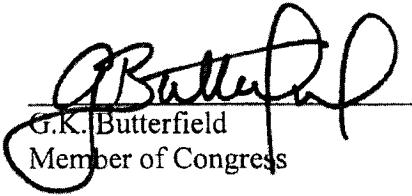
Mo Brooks
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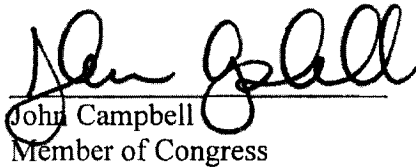
Michael Burgess
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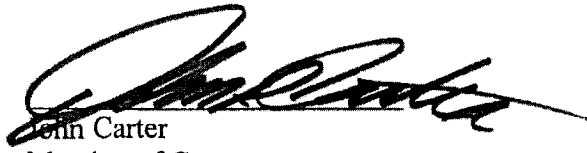
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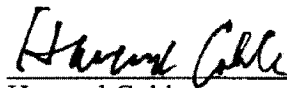
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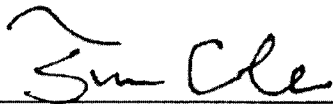
Steve Chabot
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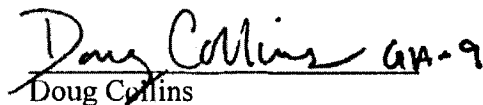
Howard Coble
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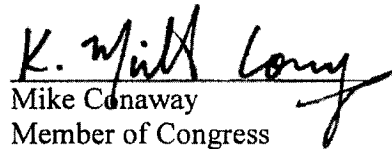
Tom Cole
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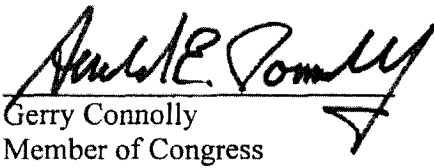
Chris Collins
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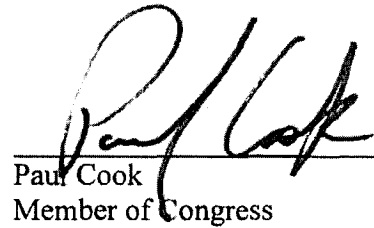


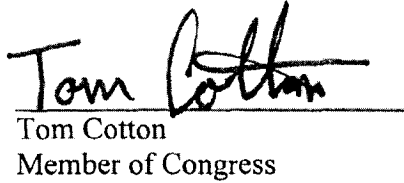
Doug Collins
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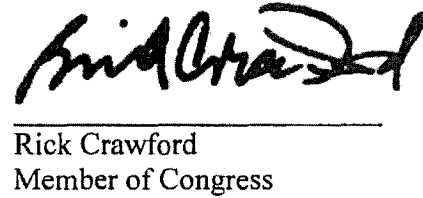


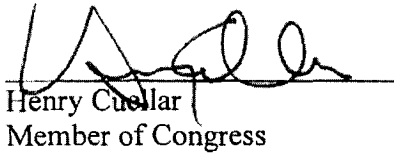
Mike Conaway
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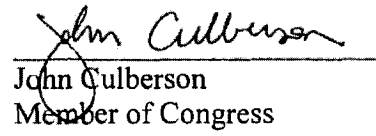

Gerry Connolly
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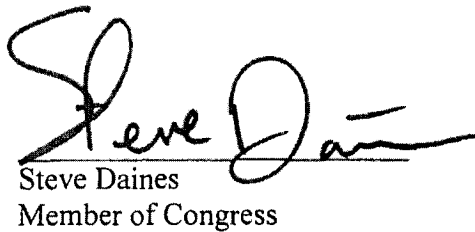

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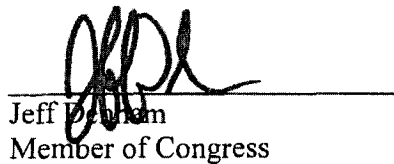

Rick Crawford
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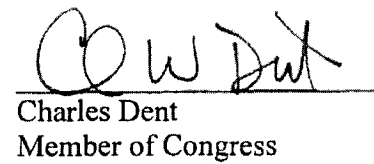

Henry Cuellar
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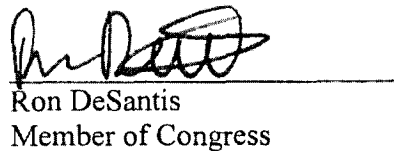

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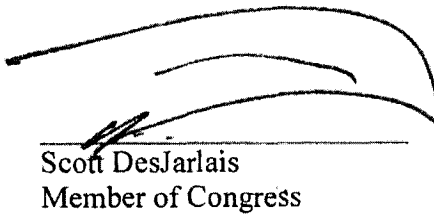

Steve Daines
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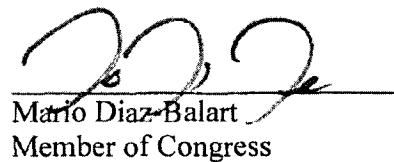

Peter DeFazio
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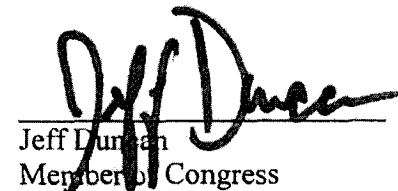

Jeff Duncan
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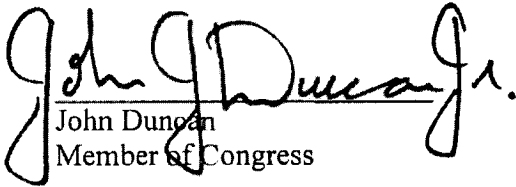

Charles Dent
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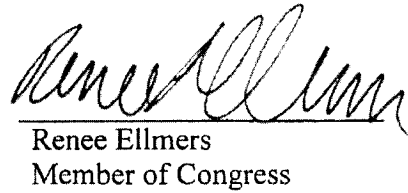

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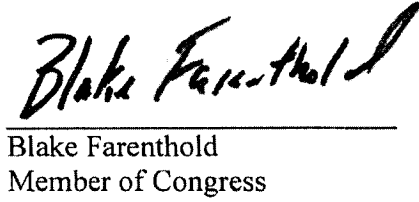

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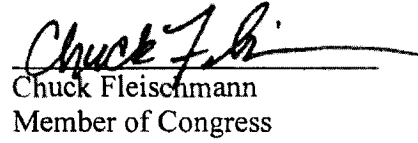

Mario Diaz-Balart
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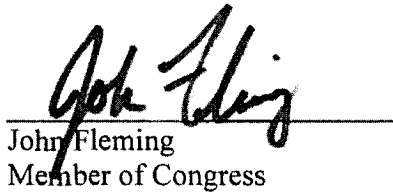

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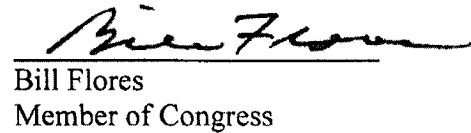

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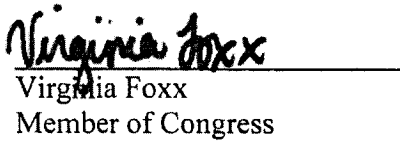

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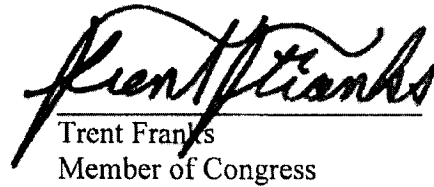

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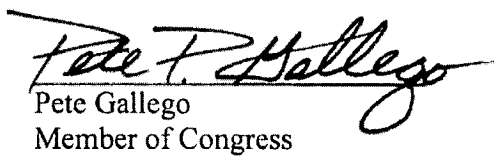

Chuck Fleischmann
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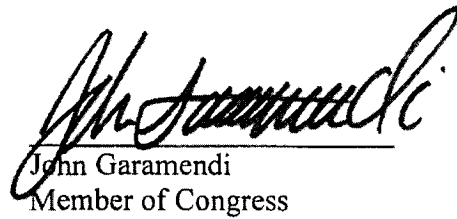

John Fleming
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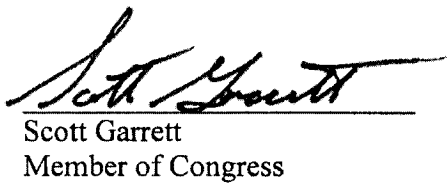

Bill Flores
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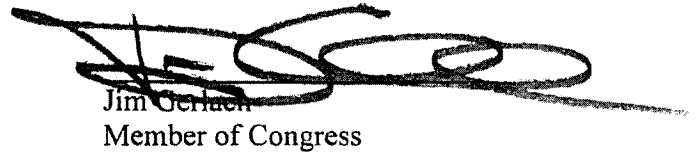

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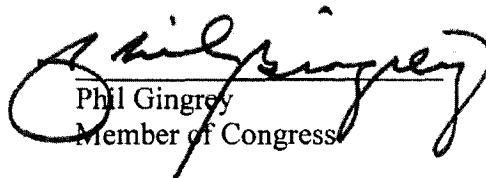

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Scott Garrett
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Chris Gibson
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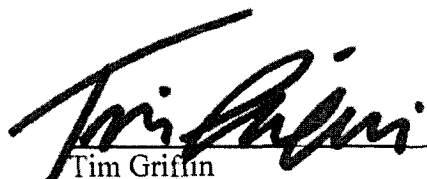
Kay Granger
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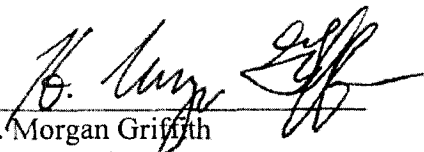
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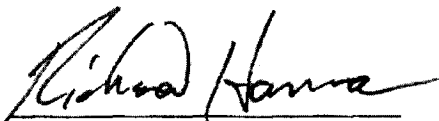
Tim Griffin
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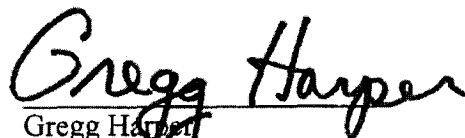
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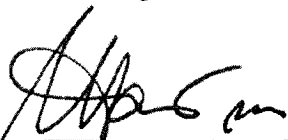
Ralph Hall
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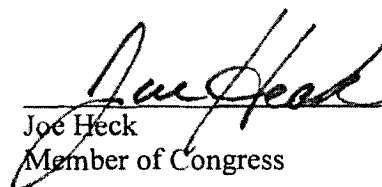
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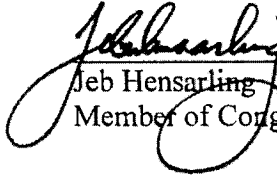
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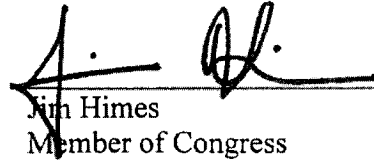


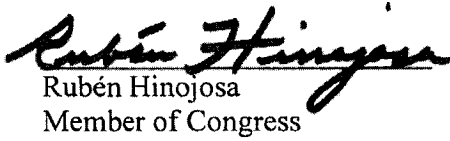
Andy Harris
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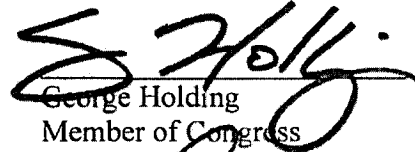


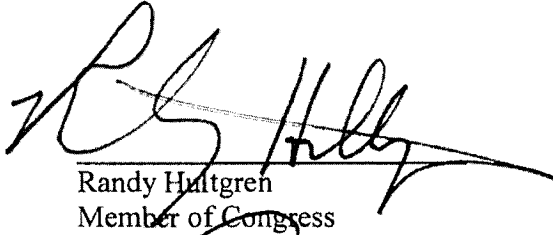
Joe Heck
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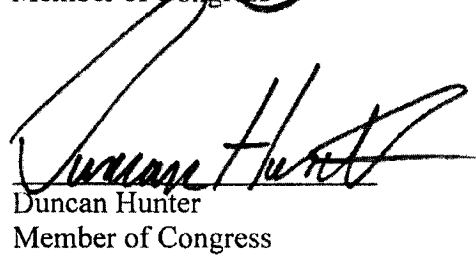

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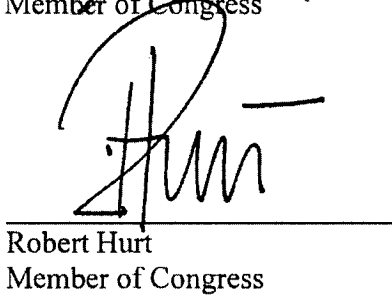

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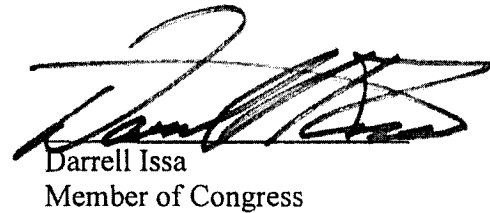

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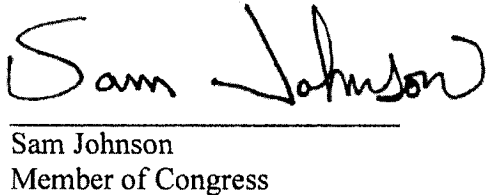

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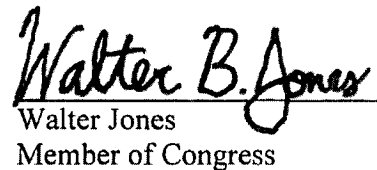

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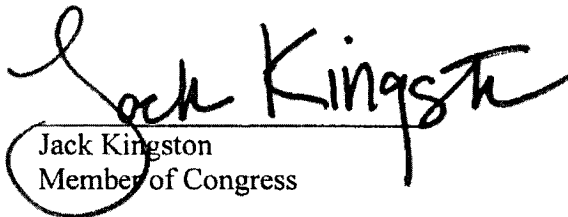

Duncan Hunter
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Robert Hurt
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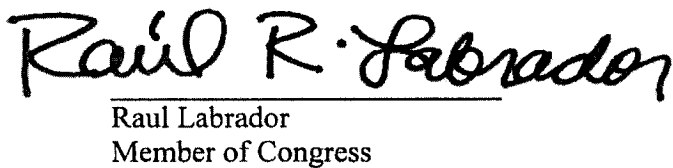

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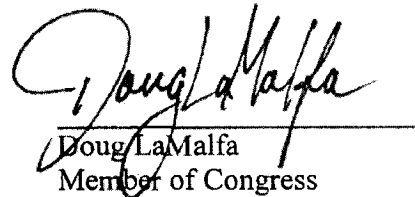

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Walter Jones
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Jack Kingston
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Ann McLane Kuster
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Raul Labrador
Member of Congress

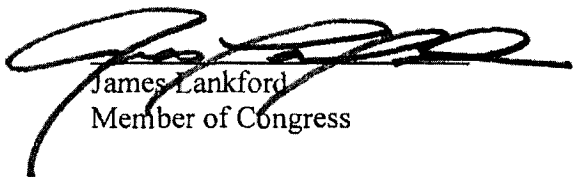

Doug LaMalfa
Member of Congress



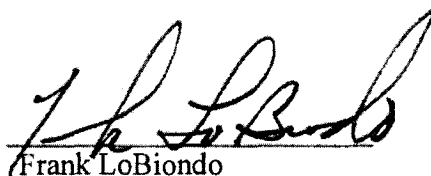
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Leonard Lance
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James Lankford
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Frank LoBiondo
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Billy Long
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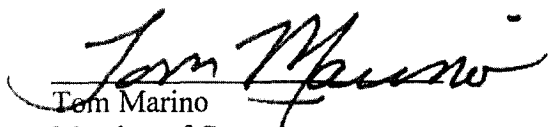
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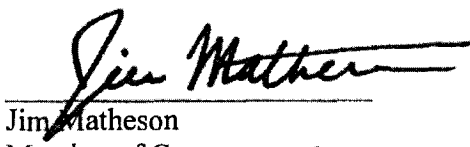
Cynthia Lummis
Member of Congress



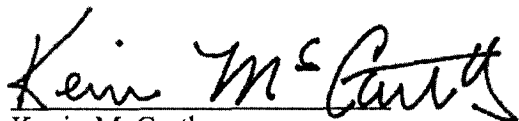
Kenny Marchant
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Tom Marino
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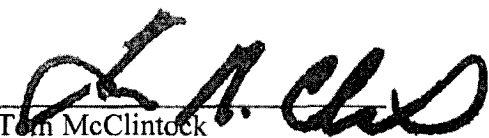
Jim Matheson
Member of Congress



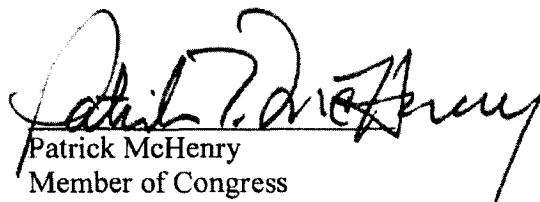
Kevin McCarthy
Member of Congress



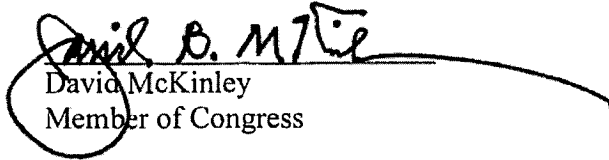
Michael McCaul
Member of Congress

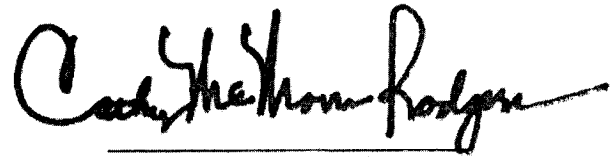



Tom McClintock
Member of Congress




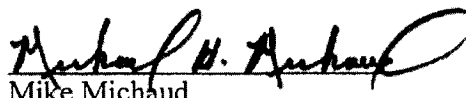
Patrick McHenry
Member of Congress

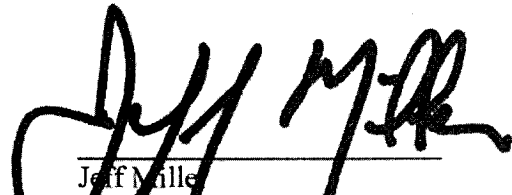

David McKinley
Member of Congress

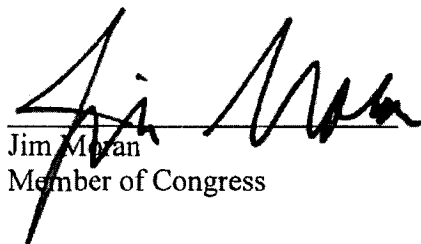

Cathy McMorris Rodgers
Member of Congress

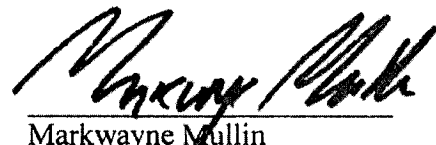

Mark Meadows
Member of Congress

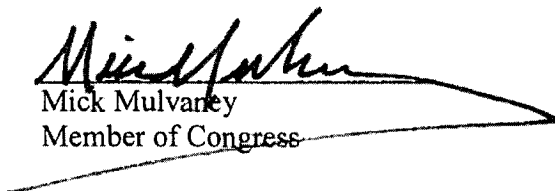

Pat Meehan
Member of Congress

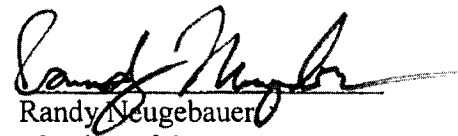

Mike Michaud
Member of Congress

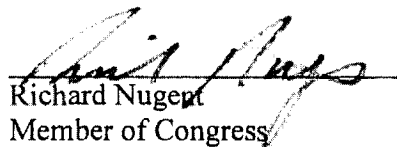

Jeff Miller
Member of Congress



Jim Moran
Member of Congress

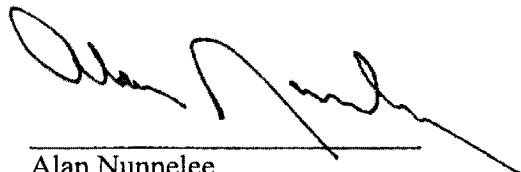

Markwayne Mullin
Member of Congress



Mick Mulvaney
Member of Congress


Randy Neugebauer
Member of Congress


Richard Nugent
Member of Congress


Devin Nunes
Member of Congress


Alan Nunnelee
Member of Congress

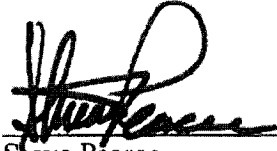

Pete Olson
Member of Congress



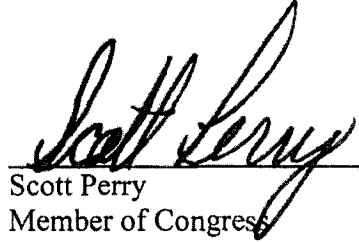
Bill Owens
Member of Congress



Steven Palazzo
Member of Congress



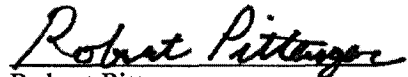
Steve Pearce
Member of Congress



Scott Perry
Member of Congress



Chellie Pingree
Member of Congress



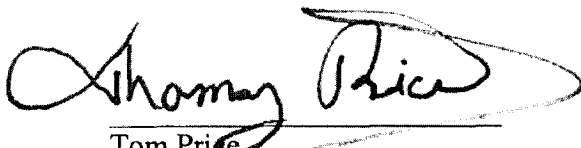
Robert Pittenger
Member of Congress



Joe Pitts
Member of Congress



Ted Poe
Member of Congress



Tom Price
Member of Congress



Trey Radel
Member of Congress



Tom Reed
Member of Congress



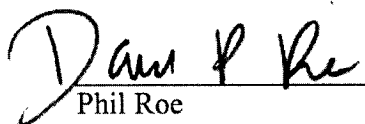
Tom Rice
Member of Congress

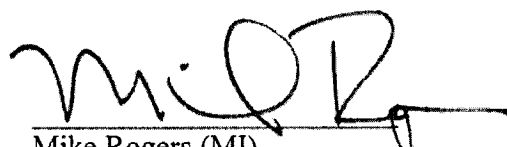



Cedric Richmond
Member of Congress

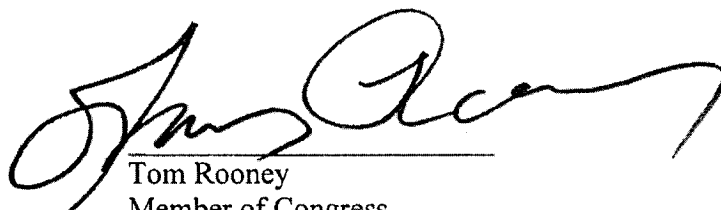


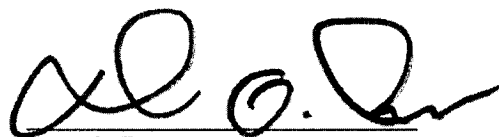
Scott Rigell
Member of Congress

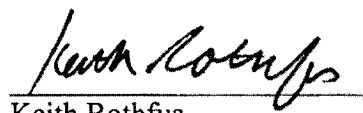

Phil Roe
Member of Congress

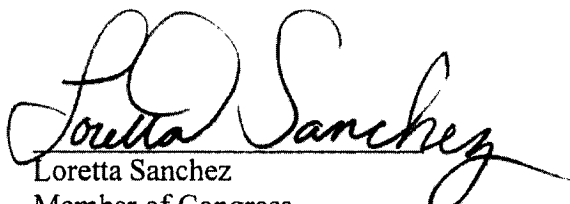

Mike Rogers (MI)
Member of Congress



Dana Rohrabacher
Member of Congress


Tom Rooney
Member of Congress

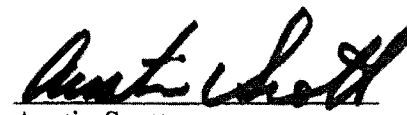

Dennis Ross
Member of Congress



Keith Rothfus
Member of Congress



Loretta Sanchez
Member of Congress

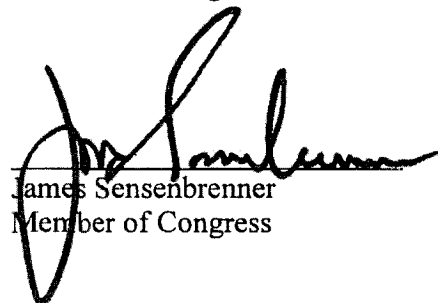

Kurt Schrader
Member of Congress

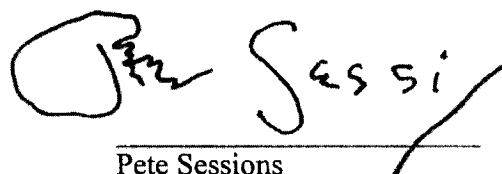

David Schweikert
Member of Congress



Austin Scott
Member of Congress

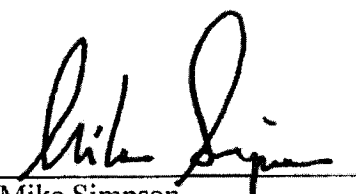

Bobby Scott
Member of Congress

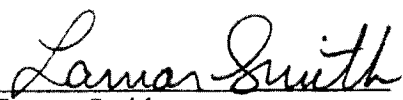

David Scott
Member of Congress

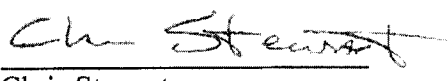

James Sensenbrenner
Member of Congress

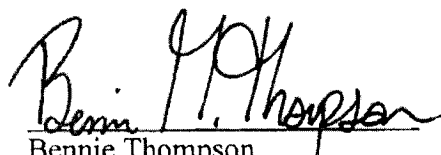

Pete Sessions
Member of Congress



Bill Shuster
Member of Congress

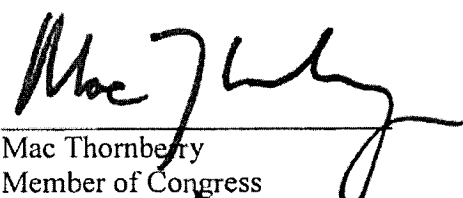

Mike Simpson
Member of Congress



Lamar Smith
Member of Congress

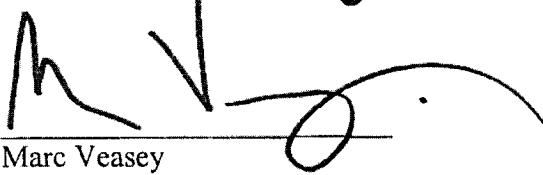

Chris Stewart
Member of Congress

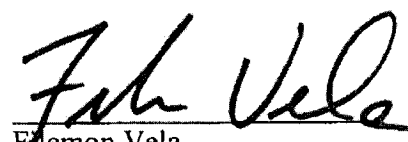

Bennie Thompson
Member of Congress



Glenn Thompson
Member of Congress



Mac Thornberry
Member of Congress

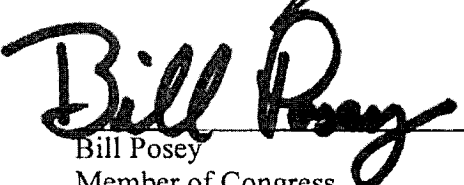

David Valadao
Member of Congress

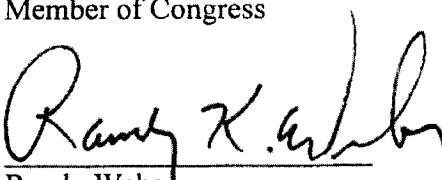

Marc Veasey
Member of Congress


Filmon Vela
Member of Congress


Tim Walberg
Member of Congress

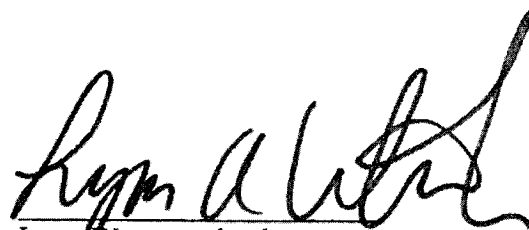

Greg Walden
Member of Congress


Bill Posey
Member of Congress

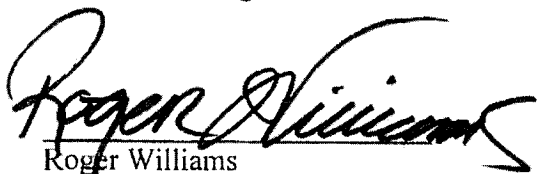

Randy Weber
Member of Congress



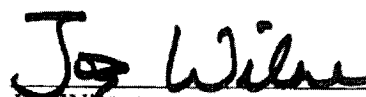
Daniel Webster
Member of Congress



Lynn Westmoreland
Member of Congress



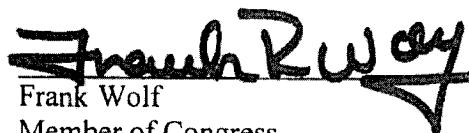
Roger Williams
Member of Congress



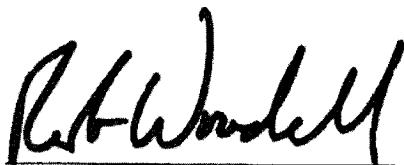
Joe Wilson
Member of Congress



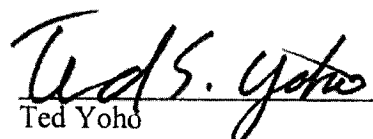
Robert Wittman
Member of Congress



Frank Wolf
Member of Congress



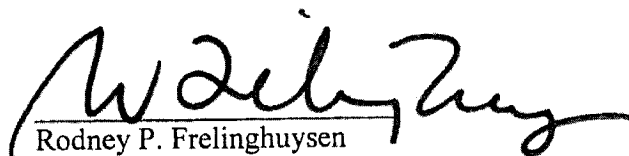
Rob Woodall
Member of Congress



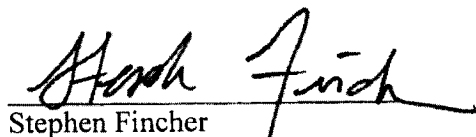
Ted Yoho
Member of Congress



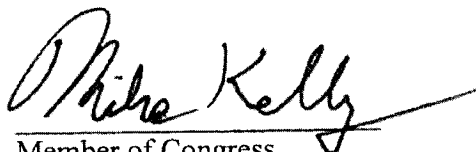
Don Young
Member of Congress



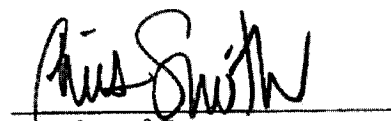
Rodney P. Frelinghuysen
Member of Congress



Stephen Fincher
Member of Congress



Member of Congress



Member of Congress

Member of Congress

Congress of the United States
Washington, DC 20515

May 1, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

The Honorable John M. McHugh
Secretary
Department of the Army
The Pentagon, Room 3E700
Washington, D.C. 20310

Dear Administrator McCarthy and Secretary McHugh:

We write to express our serious concerns with the proposed rule re-defining the scope of federal power under the Clean Water Act (CWA) and ask you to return this rule to your Agencies in order to address the legal, economic, and scientific deficiencies of the proposal.

On March 25, 2014, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) released a proposed rule that would assert CWA jurisdiction over nearly all areas with any hydrologic connection to downstream navigable waters, including man-made conveyances such as ditches. Contrary to your agencies' claims, this would directly contradict prior U.S. Supreme Court decisions, which imposed limits on the extent of federal CWA authority. Although your agencies have maintained that the rule is narrow and clarifies CWA jurisdiction, it in fact aggressively expands federal authority under the CWA while bypassing Congress and creating unnecessary ambiguity. Moreover, the rule is based on incomplete scientific and economic analyses.

The rule is flawed in a number of ways. The most problematic of these flaws concerns the significant expansion of areas defined as "waters of the U.S." by effectively removing the word "navigable" from the definition of the CWA. Based on a legally and scientifically unsound view of the "significant nexus" concept espoused by Justice Kennedy, the rule would place features such as ditches, ephemeral drainages, ponds (natural or man-made), prairie potholes, seeps, flood plains, and other occasionally or seasonally wet areas under federal control.

Additionally, rather than providing clarity and making identifying covered waters "less complicated and more efficient," the rule instead creates more confusion and will inevitably cause unnecessary litigation. For example, the rule heavily relies on undefined or vague concepts such as "riparian areas," "landscape unit," "floodplain," "ordinary high water mark" as determined by the agencies' "best professional judgment" and "aggregation." Even more egregious, the rule throws into confusion extensive state regulation of point sources under various CWA programs.

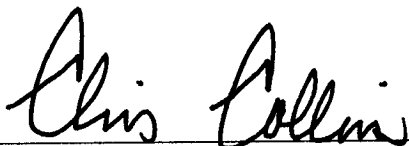
In early December of 2013, your agencies released a joint analysis stating that this rule would subject an additional three percent of U.S. waters and wetlands to CWA jurisdiction and that the rule would create an economic benefit of at least \$100 million annually. This calculation is seriously flawed. In this analysis, the EPA evaluated the FY 2009-2010 requests for jurisdictional determinations – a period of time that was the most economically depressed in

nearly a century. This period, for example, saw extremely low construction activity and should not have been used as a baseline to estimate the incremental acreage impacted by this rule. In addition, the derivation of the three percent increase calculation did not take into account the landowners who – often at no fault of their own – do not seek a jurisdictional determination, but rather later learn from your agencies that their property is subject to the CWA. These errors alone, which are just two of many in EPA's assumptions and methodology, call into question the veracity of any of the conclusions of the economic analysis.

Compounding both the ambiguity of the rule and the highly questionable economic analysis, the scientific report – which the agencies point to as the foundation of this rule – has been neither peer-reviewed nor finalized. The EPA's draft study, "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," was sent to the EPA's Science Advisory Board to begin review on the same day the rule was sent to OMB for interagency review. The science should always come before a rulemaking, especially in this instance where the scientific and legal concepts are inextricably linked.

For all these reasons, we ask that this rule be withdrawn and returned to your agencies. This rule has been built on an incomplete scientific study and a flawed economic analysis. We therefore ask you to formally return this rule to your agencies.

Sincerely,




CHRIS COLLINS
Member of Congress



KURT SCHRADER
Member of Congress



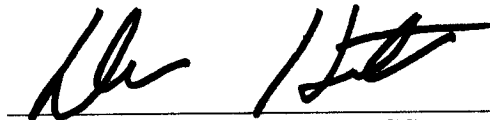
BILL SHUSTER
Chairman
House Committee on
Transportation and Infrastructure



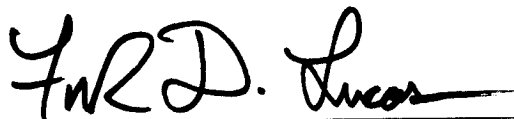
LAMAR SMITH
Chairman
House Committee on
Science, Space, and Technology



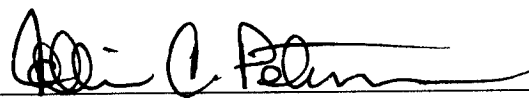
FRED UPTON
Chairman
House Committee on
Energy and Commerce



DOC HASTINGS
Chairman
House Committee on
Natural Resources



FRANK LUCAS
Chairman
House Committee on Agriculture



COLLIN PETERSON
Ranking Member
House Committee on Agriculture

Ed Whitfield

Ken Calvert

Ron Lambert

Jim Walker

Steve King

JT Smith

Dr Yarny

Dan Riker

John Koster

Fah Uela

Bill Byrd M.C.

Ron E. Foster

Vietnam
Lynn Baker

Adrian Pariter

John G. Manning

John Banner

Walter B. Jones

Mike Simpson

~~Charles B. Akers~~

Bill Owens

Tom Sisk

Jim Sisk W1-05

Robert J. With VA-01

Rat Tiliu

Sydney P. Lummis

J P Lummis

Bazzy

Tim Hurlburt

Alaska Blackburn

Ken Yoder

Julie Wink

Odd Roberts

Jan F. R.

Mark V. Amaro

Van H. R.

Milly P. Pompeo

Joe Baratta

Mike Karanthod

John Henry

Gene R. Tipton

Jim Bidmstein

Long Adams

Dr. R.

Chuck Fleish

Paul Scott

R. A. Nam

Thomas Massie

Brett Guthrie

Jim Jim M.C.

Ch Stewart

Ann Sch

Larry Bueh

~~Tom~~ Tom

Kay Jones

Bill Fum

16 Mar 1991

Highland

D. Bunker

Bill Caridy

Gregg Harper

Glen GT Thompson

Archie Rye (M-03)

La Van

Jayong

Vicky Hartzler

Lynn Jenkins

Ken Cane

Gene Womack

Roger Williams

Jaime Herrera Beutler

Terri Sewell

Tin L. L. (AR-02)

Fred R. W. W.

A. P. C.

Sam S. S.

Alan S.

Paul N.

Dilly Song

Susan W. Brooks

Mark Kelly

J. J.

Bill Johnson

Andreas

Bob H.

Bob H.

Miss M.

for A.

Andy B.

Andy B.

Andy B.

Ken R.

Rail R. Labrador

Andreas

Andreas

Will S.

R. Woodall

CPH

Duane Black

Mo Brooks

B

Kerry W. Smith

Gene Jensen

Ch. Bondary

Nick Stapp

John Culberson

Ed. M. Bilinski

Luke Messer

Mark Wayne Mullin

Pat Skyles

Don B. Agel

Ch. Jensen

Hunt

Sam Johnson

Mark Skyles

~~AWWWWW~~

CE W. Ditt

Gene Krystas

Jeffrey Jensen

Tom Perkins

Tom Rice

John H. H. 11-03

John H. 11-03

Robert Pittenger

Pete Olson

Pat H.

H. Viny

S. Holby

Rene J. H.

Kevin M. Cant

Virginia Cox

Mar 7/11

Kevin E. Paul

Erik Paulsen

Joe Heck

John E.

Tom Marino

Darin Noveck

Michael A. Amodeo

K. M. Long

Jim G.

St. Chab

Rubin Hongoria

Greg Walden

Howard Cobb

Ja Borton

Frank R. Wiley

R. Raskin

Kerry Bestwick

Cathy McNamee

Paul Cook

Shane R. Lettice

John Rahall

Joe Wilson

Scott Smith

Michael R. Jones

Angela Miller

~~_____~~

Patrick J. McHenry

Howard C. Buck

Congress of the United States
Washington, DC 20515

May 22, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

We are writing to request that the Environmental Protection Agency provide a sufficiently long comment period on its upcoming regulation of greenhouse gases from existing power plants. The Agency should provide at least a 120 day comment period, given the significant impact this rule could have on our nation's electricity providers and consumers, on jobs in communities that have existing coal-based power plants, and on the economy as a whole.

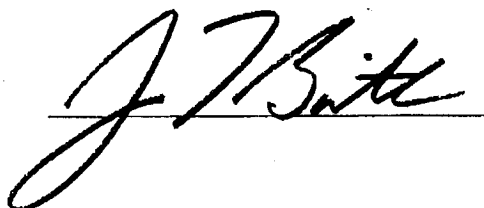
The upcoming proposal will necessarily be more complex for the industry to deal with than the proposal for new plants, and stakeholders will need time to analyze the rule and determine its impact on individual power plants and on the electric system as a whole. This analysis will be no small undertaking, especially since this will be the first ever regulation of greenhouse gases from existing power plants. Additionally, since the EPA extended the original 60 day comment period for the new plant proposal, it makes sense to provide at least the same timeline for the existing plant rule.

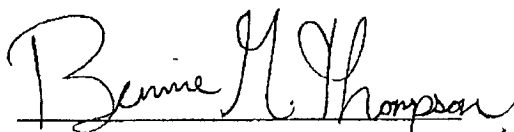
Affordable and reliable electricity is essential to the quality of life to our constituents. While we can all agree that clean air is important, EPA has an obligation to understand the impacts that regulations have on all segments of society. As one step toward fulfilling this obligation, we urge you to provide for a comment period of at least 120 days on the forthcoming new source performance standards for existing coal-based power plants.

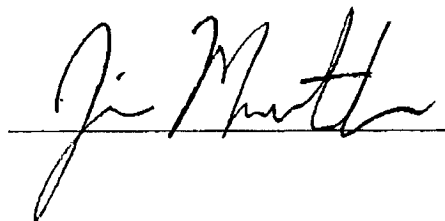
Thank you for your consideration of this request.

Sincerely,









Robert Adenholz

De Yung

Jim Matheson
CPL

Mark B. Shuman

Suzanne Brooks

Kyle S. Jr

Ron Barber

Mac J. Lundy

John Barrow

Shane R. Pettin

Rodney Davis

Raul R. Labrador

Trey Gowdy

Jenni Sewell

Darin Noma

Andre Brucke

No 777

Alan Wagner

Jackie Walveski

K. M. Long

Nickie M. Fortye

Hy Cullen

Frankie Banks

Tim Walberg

Paul Ben

John Kline

~~Bob [unclear]~~

Mike Colman

Q. W. Dutt

Sam Cole

Tim Peters

Chris Cullens

Markwayne Mullin

J. Magnifico

Jayong

A. Bucher IN-08

Paul Webster

Chui Buxton

Eric Evers

Vicky Hartman

Rita Ay

Conrad Mylon

Christi Noem^(SD)

Jim Ha

J.P. Cing

Mike Hake

Tri Allen

Midland

Win Zempert

Bob Woodall

Sam

Keith Little

Jeff Fortenberry

Jim Jackson

Orlene Black

Dave Loeback

Billy Long

Ed Palmiter

Sam

Alan

C.W. Bonstetter

Andy Bone

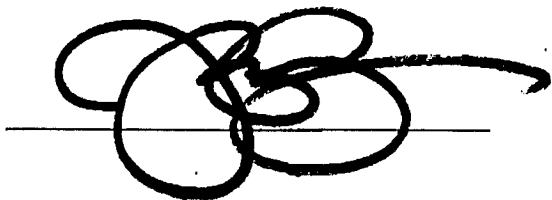
Alfred Lee Funt

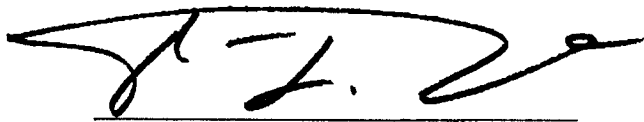
Randy K. Weller

Quaker Scott

Tad S. Geko

Oliver GT Thompson
Hunt





Bill Gray M.C.

Dyell

Kim Schneider

Don Benishke

Mary Pomper

Tom Huelstberg

Thomas Biese

Robert Luttinger

Mike Sipe

John IL-15

Joe Wilber

Rubin Hengosa

Ken Terry NE-2

Paul M

Jack P. Jew

Don D. H. H.

Bill Huizenga

Ch. H.

Frank R. W. H.

Steve W. H.

Mr. J. H. H.

Lynne Jenkins

Ken Crum

W. J. H.

Pat Tiller

J. Rody Forbes

Vern Buhner

James Buhner

Michael R. Jensen

Scott Garrett

Stu Chabot

Wm. Lacy Clay

Butterfield

Willie Pen

Howard Coble

Danny H. Davis

Adrian Smith

Tom Sisk

Virginia Fox

Ernest Penner

Steve King

Amford D. Bishop Jr.

Gene Green

Steve Chaffetz

Doug Lamborn

Denny

Richard Buchanan

Lynn A. Woolh

Steve Pearce

Blaine Luetken

Sen. M. B. B. B.

Mike Rahall

Frank D. Lucas

Jack Kingston

Shelley Moore Capito

Walter B. Jones

Tim Wirth

Rob Bly

Long Adams

Steve Di

Angela

Chris

Mike Kozak

Ch Stewart

Brett Hathorn

Tom Mann

Joyce Beatty

Jackie Walveski

Renee Elie

Fah Vele

Hath Pether

Paul A. Horan

John Messer

Jeff Durr

Shirley Peery

Cynthia D. Lummis

June V. Amos

Martha Bloom

Conan Hunt

Scott R. Tipton

Tim Beath

A. G. Orr

Odd Pedersen

Chuck Flinn

Steve P. P. P.

Y. K. K. K.

B. A. B. A.

Gregg Harper

J. H. M. H.

Ann Sch

Tom Rice

Nick Sauer

John F. Mallego

Martha Robey

Tom Graves

Tam Cotto

Daniel P. Pace

Randy Huley

Thomas Massie

Michael P. G. AL-3

Richard Hudson

M. M. M.

TN-04

David B. M. T. C.

Chil. T. T. T. T.

John J. Dunsage.

Congress of the United States
Washington, DC 20515

November 4, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy,

We write to express significant concern with the recently proposed 2016 Renewable Volume Obligations (RVO) under the Renewable Fuel Standard (RFS). The RVO as currently proposed would constitute a breach of the ethanol blendwall, which would cause adverse impacts on American consumers and the economy.

Congress expanded the RFS when it passed the Energy Independence and Security Act of 2007 (EISA). EISA mandated an annually increasing volume of biofuel to be blended and consumed in the nation's motor fuel supply, reaching 36 billion gallons of biofuels in 2022. In 2007, the market assumptions regarding the future of transportation fuels in the United States were very different from the realities of the market today. The Energy Information Administration (EIA) at the time projected motor gasoline demand to significantly rise through 2022¹. Since then, EIA has revised its 2007 projection of motor gasoline in 2022 downward by 27% and projects motor gasoline demand to continue to decline through 2035¹.

Increased fuel efficiency has led to shrinking gasoline demand. This current reality, coupled with an increasing biofuel blending level requirement, has exacerbated the onset of the E10 blendwall—the point at which the gasoline supply is saturated with the maximum amount of ethanol that the current vehicle fleet, marine and other small engines, and refueling infrastructure can safely accommodate. We agree with the EPA's conclusion in its first RVO proposal for 2014 and in its current proposal for 2014, 2015, and 2016 that the E10 blendwall is a binding constraint.

We are gravely concerned, however, that despite the Agency's recognition of the blendwall, the 2016 proposal acknowledges that it will be breached nonetheless. Specifically, EPA states that the 2016 RVO “includes volumes of renewable fuel that will require either ethanol use at levels significantly beyond the level of the E10 blendwall, or significantly greater use of non-ethanol renewable fuels than has occurred to date.”²

¹ Energy Information Administration, *Annual Energy Outlook 2007-2015*, Reference Case Table 11

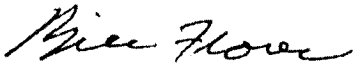
² Federal Register, Vol. 80, No. 111, Wednesday, June 10, 2015, Proposed Rules (p.33102), *EPA Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017; Proposed Rule*

Multiple studies have shown detrimental economic harm may be caused by breaching the E10 blendwall. A 2014 report on the RFS by the nonpartisan Congressional Budget Office concluded that requiring the volumes of biofuel in EISA, which would breach the blendwall, could increase the price of E10 gasoline by up to 26 cents per gallon³. NERA concludes in a July 27, 2015 study that "higher gasoline prices leave consumers with less disposable income⁴", further hindering economic growth. An RFS study by Charles River Associates concurs: "The result [of exceeding the blendwall] will be limited availability, higher consumer costs, and fewer sales of conventional transportation fuels⁵." This adverse economic harm falls hardest on America's lower income families.

EPA acknowledges that its 2016 RVO proposal would require significant greater use of E15 and E85 in order to meet the proposed mandate in 2016. Therefore, this proposal is problematic not only in principle, but it is also impractical since it would take decades, not months, to build out the compatible vehicle fleet and install the necessary retail infrastructure to accommodate the higher blends of ethanol. AAA calculates that only 5% of the vehicles on the road are approved to use E15⁶ and the EIA calculates that only 6% of vehicles can use E85⁷. The refueling retail infrastructure is even more limited with only 2% of retail stations selling E85⁸ and only 100 stations nationwide selling E15⁹.

Congress will continue its work toward a bipartisan solution to deal with the RFS. As this work continues, it is critical that EPA use its statutory authority to waive EISA's conventional biofuel volume to keep the blending requirements below the E10 blendwall, and to help limit the economic and consumer harm this program has already caused.

Sincerely,



Bill Flores
Member of Congress



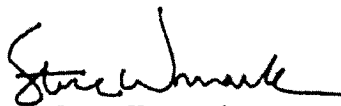
Peter Welch
Member of Congress



Bob Goodlatte
Member of Congress



Jim Costa
Member of Congress



Steve Womack
Member of Congress

³ Congressional Budget Office, *The Renewable Fuel Standard: Issues for 2014 and Beyond* (June 2014)

⁴ NERA Economic Consulting, *Economic Impacts Resulting from Implementation of RFS2 Program* (July 2015)

⁵ Charles River Associates, *Impact of the Blend Wall Constraint in Complying with the Renewable Fuel Standard* (November 2011)

⁶ American Automobile Association, Press Release "New E15 Gasoline May Damage Vehicles and Cause Consumer Confusion" (December 2012)

⁷ Energy Information Administration, *Annual Energy Outlook 2014*

⁸ Fuels Institute, *E85: A Market Performance Analysis and Forecast* (2014)

⁹ Renewable Fuels Association data (www.ethanolrfa.org)

Jeff Plesman

Tom Barletta

Bob Boy

Glenn Thompson

Alan Kessel

Thomas Chie

Jim Heck

Gary Johnson

Jim Biedenstein

Tom Zick

Bill Posey

Rob Boy

Ann

Bruce Western

Mindy McCarl

Art R

Joselyn Castro

Don B. Lane

Robert J. Dadd

Nick Patyger

D.C. Orr

Robert A. Verne

Mimi Zeller

Kim Basso

Thomas Massie

Will Hurd

Joseph R. Valpey

Tom Lice

Barbara Comstock

Charles J. Elwell

St. J. De

Bryan Anderson

Gregg Harper

Diana Labin

Al. Hanna

Ru. Orr

Ryan Costello

Denny Heck

D-d Rouzer

Joseph R Pitts

Scott Rigell

M V

Michael

Sam B. M'lie

Dan J. Schipani

David Rose

Pete King

Jeff Miller

Mark V. Anderson

Dan Brou

Fred Minth

John Ratcliffe

Ch. Stewart

Paul Rogers

Don Brink

Rita W. Allen GA-12

Ted S. Yoko

Rocky K. Weber

S. Holly

Sh. M. Ayte

Paul A. Leland

E. H. Jenkins

Glen Grotman

Joe Joe

Fab Vele

Mig Pompo

John Mark

Earl L. Buddy Carter

Nichol Hudson

Mike Bishop

Roller

1 Devin Nunn

Rais Lunkel

Blake Funtke

Kay Jensen

~~John~~

Jaime Herrera Beutler

W. May Jr VA-9

Mark McSally

Dwain Black

W. W. W.

Markwayne Mullin

Kenny Egan

Alex X. Mooney

Mo Brooks

D. Amodeo (AR-2)

Paul Cook

Chris Collins (NY-27)

Keith J. Rothfus

W. W. W.

~~CPA~~

Dilly Lang

~~DeSandro~~

Ji Jadar

Judy Alice

Andy Barr

~~Cheryl Campbell~~

Paul Hahn TX-19

Roger Williams

~~Don Ambrose~~

Raul R. Labrador

Mike Kelly

Zu Zhi NY-01

Doug Collins GA-9

CW Boushara A
J & L

Trey Gandy

David R. Wenzel

Kim Crandall

Rob Woodall

Rich Taylor

Joe Barton

John Barte

Sen M. Bilirakis

Pete Olson

Mark Sanford

Jeff Sessions

Pete DeFazio

Andre Cruse

John Dingell

Dwight Walcott

Dan Claitor

Chell R

Scott Peters

Lynn Whitfield

Mac Thornberry

Hy Chellor
Charles W Dent

Paul H
Dan Rosten

John Hausaling
Joe Wilson

Sam Johnson

Scott Garrett

Ed Royce

Bob Sasser

Mike Espy
Kerry Mitchell

Ronnie Lohmeyer

Ruben Hinojosa

Arthur Blackburn

Jeff Butten
PP Miller

Bill Sum

Ken Young

Steve Scalise

Walter B. Jones

Virginia Foxx

St. Hakt

Paul Smith

Lamar Smith

Austin Scott

Frank A. Lobiondo

J. M. Chas

J. K. Beyer (M)

Jeff Shum

Leonard Lance

John Culberson

Doug Lamborn

AMM

Mike Yabon

Tom Murphy

Donna Hunt

Steve Fenn

Kent Starks
Tom Reed NY 23

Mike Cohen

James H. W. WI-05

Sept Le Funt

Robert J. Weller

Bruce Soliquin

Kurt Schrader

Gerald R. Lummis

Tim Walle

Tom Graves

Ben Ray Lujan

Er Gb

Dra Green

K. Quintana

Congress of the United States
House of Representatives
Washington, DC 20515

June 8, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy,

We write to express concern regarding the Environmental Protection Agency's (EPA) implementation of the Renewable Fuel Standard (RFS). As you know, EPA's 2016 rule increasing Renewable Volume Obligations (RVOs) is projected to move us beyond the blend wall. We remain concerned about the lack of consumer awareness surrounding the limitations of E15 and the damage it can cause to engines and infrastructure. As such, we ask EPA to provide information as to how the agency plans to ensure that consumers are given adequate information regarding this issue.

Following EPA's final rule issued on November 30, 2015, the use of ethanol blends such as E15 will be increasingly required in order to meet EPA's RVO requirements. Since 2011, EPA has recognized the limitations of E15 and only approved E15 for use in conventional motor vehicles of model year 2001 and newer. In its approval process, the EPA prohibited the use of E15 in non-approved engines, including motorcycles, off-road vehicles, boats and marine equipment, small spark-ignited engines, and vehicles older than 2001. Accompanying the E15 waiver, EPA consented to the 2012 Misfueling Mitigation Plan to help provide guidance and protections to retailers and consumers. Thus, to date, the only information offered to consumers, to our knowledge, has been an at-the-pump, 3x3 inch label, which has not provided sufficient awareness of the dangers of mistakenly fueling with E15.

Additionally, in its 2015 rulemaking, EPA recognized its RVOs for 2016 will put pressure on the market to exceed the E10 blend wall, acknowledging that meeting the increased volume level could require significantly greater use of E15. Thus, for the first time, the ethanol content of our nation's gasoline supply will exceed the amount of ethanol that can be safely accommodated by much of our infrastructure and in non-approved engines, like motorcycles, boats, and outdoor power equipment. This is of particular concern because, according to a recent report, only five percent of consumers are currently aware that E15 is prohibited for use in certain engines, with 60 percent of consumers assuming that any gas sold at a gas station must be

safe for all of their engines. Only 24 percent of consumers notice ethanol content while at the pump¹.

However, while consumers remain unaware of the high cost of inappropriate use of E15, misfueling can lead to significant problems. According to the American Automobile Association, American Motorcyclist Association, and National Marine Manufacturers Association, use of E15 will instantly void warranties for their engine products. Additionally, research conducted by the marine industry shows that E15 use in marine engines can pose serious safety and technology concerns, including operational malfunctions and complete engine failure.

As E15 supplies increase across the country, uninformed consumers will make fueling mistakes, resulting in costly and dangerous malfunctions. Therefore, we request information on what type of research EPA has performed, and any data it has collected, to understand the current level of consumer awareness regarding the dangers inherent in the inappropriate use of E15. In addition, we request information as to what actions EPA has taken to address consumer awareness and ensure the American public has the information it needs to avoid the consequences inherent within the distribution and use of midlevel blends of ethanol, like E15.

Congress will continue to seek a permanent solution for the RFS, but until then it is imperative that EPA take upon itself the responsibility to reduce the likelihood of widespread fueling mistakes associated with E15. We request a response as to how the agency plans to prevent such avoidable accidents if it intends to continue to administer the RFS in a manner that increases RVOs to a level beyond the blend wall. We look forward to hearing from you.

Sincerely,



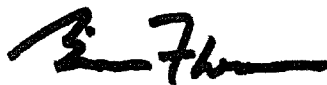
Bob Goodlatte
Member of Congress



Peter Welch
Member of Congress



Steve Womack
Member of Congress

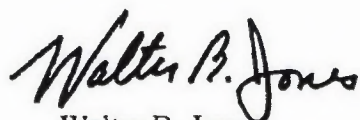


Bill Flores
Member of Congress

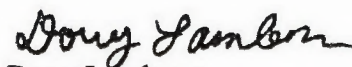


Jim Costa
Member of Congress

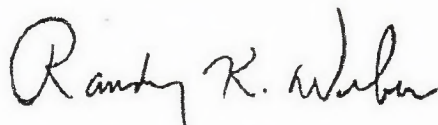
¹ "A Survey about Ethanol, Fuel and Gasoline Pumps" prepared by *Harris Poll* (March, 2016)



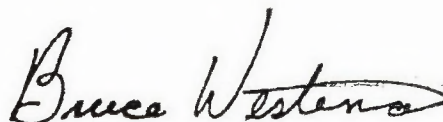
Walter B. Jones
Member of Congress



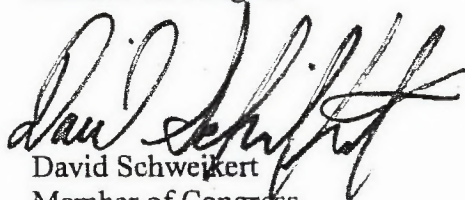
Doug Lamborn
Member of Congress



Randy Weber
Member of Congress



Bruce Westerman
Member of Congress



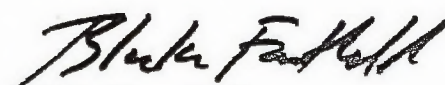
David Schweikert
Member of Congress



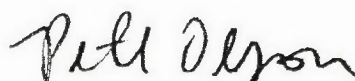
Paul Gosar
Member of Congress



Mo Brooks
Member of Congress



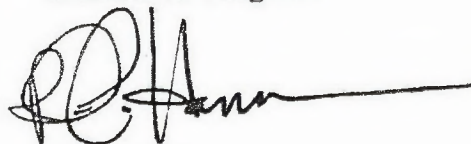
Blake Farenthold
Member of Congress



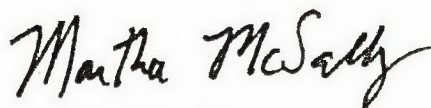
Pete Olson
Member of Congress



Keith Rothfus
Member of Congress



Richard Hanna
Member of Congress



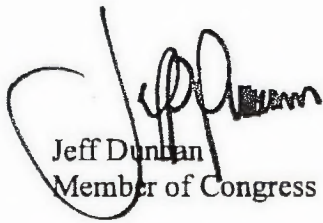
Martha McSally
Member of Congress



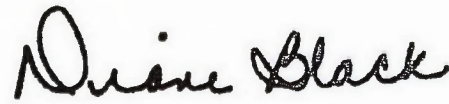
Andy Harris
Member of Congress



Doug LaMalfa
Member of Congress



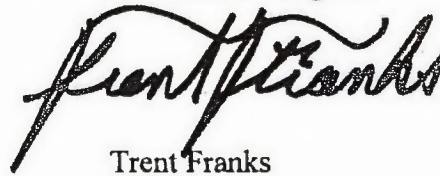
Jeff Duncan
Member of Congress



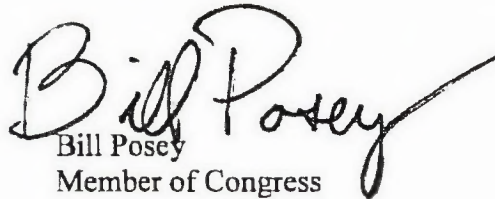
Diane Black
Member of Congress



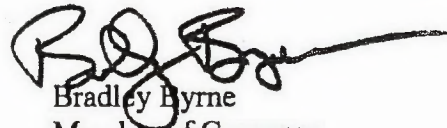
Frank LoBiondo
Member of Congress



Trent Franks
Member of Congress



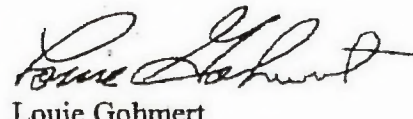
Bill Posey
Member of Congress



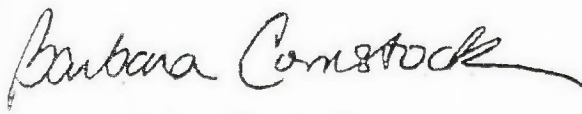
Bradley Byrne
Member of Congress



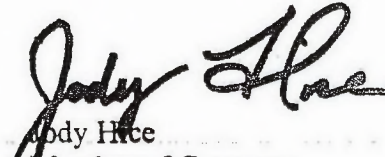
Pete Sessions
Member of Congress




Louie Gohmert
Member of Congress



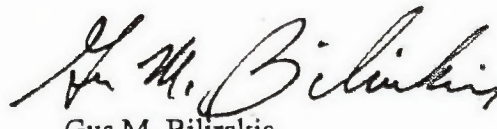
Barbara Comstock
Member of Congress



Jody Hice
Member of Congress




David W. Bonior
Member of Congress




Gus M. Bilirakis
Member of Congress



Duncan Hunter
Member of Congress




Todd Rokita
Member of Congress




Jim Bridenstine
Member of Congress




Mick Mulvaney
Member of Congress



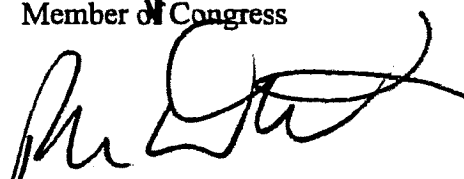
Earl L. 'Buddy' Carter
Member of Congress



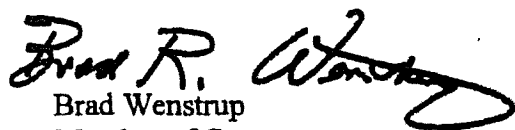
Doug Collins
Member of Congress



French Hill
Member of Congress




Ron Desantis
Member of Congress




Brad Wenstrup
Member of Congress

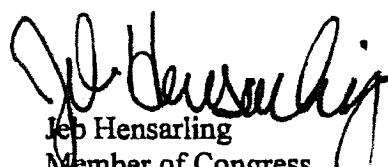
Tim Murphy
Member of Congress




Tom Cole
Member of Congress



Robert Hurt
Member of Congress



Jeb Hensarling
Member of Congress



Rob Bishop
Member of Congress

Congress of the United States
Washington, DC 20515

April 7, 2017

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Attorney General Sessions and Administrator Pruitt,

As you review the litigation that was pending on behalf of your agencies when you assumed office, we write to bring to your attention *Murray Energy Corp. v. McCarthy*, a case pending before the U.S. Court of Appeals for the Fourth Circuit.

The case centers on the EPA's obligation, as clearly established in the Clean Air Act (CAA), to continuously evaluate potential losses or shifts of employment resulting from administration or enforcement of the CAA. We agree with the U.S. District Court for the Northern District of West Virginia's sound interpretation of the law on this matter and respectfully urge you to withdraw the pending appeal. We are encouraged by prior stances that each of you have taken on this issue.

As you may recall, §321(a) of the Clean Air Act (42 U.S.C. § 7621(a)) provides:

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of this chapter and applicable implementation plans, including where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement.

The EPA has construed this provision as a discretionary duty, disregarding the plain language of the law and the relevant legislative history. In fact, the EPA has never complied with this statutory requirement. As recently as 2009, Administrator Gina McCarthy asserted that the agency "has not interpreted CAA section 321 to require EPA to conduct employment investigations in taking regulatory actions" and that "[c]onducting such investigations as part of rulemakings would have limited utility."

On March 24, 2014, Murray Energy Corporation ("Murray") filed a civil action against the EPA, asserting that the EPA's refusal "to evaluate the impact that its actions are having on the American coal industry and the hundreds of thousands of people it directly or indirectly employs" is irreparably harming the plaintiffs.

On October 17, 2016, the District Court granted summary judgment in favor of Murray, ordering the EPA to fully comply with the requirements of § 321(a) and further noting that "it would be an abuse of discretion for the EPA to refuse to conduct a § 321(a) evaluation on the effects of its regulations on the coal industry.

The EPA's assertion that the § 321(a) provisions are discretionary or satisfied by EPA's compliance with other requirements flouts the plain language of the Clean Air Act. In effect, the EPA is seeking to selectively choose which laws to enforce. By refusing to carry out the law on this matter, the EPA is picking winners and losers in the economy. Its interpretation of this law results in a dereliction of the EPA's duty to examine the employment effects of regulations and the wholesale destruction of the copper mining, steel, textile, and coal mining industries.

Over the last four decades, these industries have borne the burden of increased regulatory mandates and costs. As Congress examines avenues for fostering economic growth, such as identifying the negative impacts of regulatory burdens on certain industries, it is imperative that the EPA interpret § 321(a) of the Clean Air Act at face value, without ignoring its clear obligations under federal law.

Should you decide to withdraw this appeal, the EPA's analysis of the costs of regulations will give lawmakers the tools and information needed to accurately examine the impact of the Clean Air Act on American jobs. We appreciate your consideration and look forward to your response on this matter.

Sincerely,

John Rochette

Seb Fisher

Bob Goodlatte

Paul A. Lujan, MS

Tony Marino

Mark Walker

Glen Gauth

Mike Kelly

Al. May Jr

Stuart Pence

Andy Biggs

Bruce W. Eden

Tom Emmer

Jim Banks

Rick W. Allen

Roger W. Marshall

Jody Hice

Bill Pence

Harry Johnson

Bob Dink

Steve Chalot

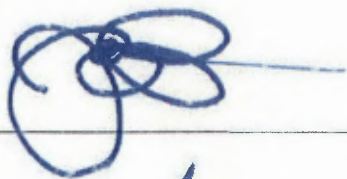
Bruce Cramer

Uel S. York

Richard Hudson

Jim Davis

MIKE JR



Bong Jackson

to by

Dan Burt

Lynn Jenkins

Roger Whinnings

George Lamborn

My. lhr

Lamar Smith

Franklin Jensen

Randy Karlson

Evan H Jenkins

Ph. O. S.

Andy B.

Dan Ambrose

Luke Messer

Jeff Lincan

Brett Guthrie

Pete Sessions

Ben Fournier

Austin Scott

[Signature]

John Chize^{no}

Robert Winter

James McLaughlin

Shelley Mone Capito

Ben Sasse

Tom Catto

Congress of the United States
Washington, DC 20515

November 4, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

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Congress expanded the RFS when it passed the Energy Independence and Security Act of 2007 (EISA). EISA mandated an annually increasing volume of biofuel to be blended and consumed in the nation's motor fuel supply, reaching 36 billion gallons of biofuels in 2022. In 2007, the market assumptions regarding the future of transportation fuels in the United States were very different from the realities of the market today. The Energy Information Administration (EIA) at the time projected motor gasoline demand to significantly rise through 2022¹. Since then, EIA has revised its 2007 projection of motor gasoline in 2022 downward by 27% and projects motor gasoline demand to continue to decline through 2035¹.

Increased fuel efficiency has led to shrinking gasoline demand. This current reality, coupled with an increasing biofuel blending level requirement, has exacerbated the onset of the E10 blendwall—the point at which the gasoline supply is saturated with the maximum amount of ethanol that the current vehicle fleet, marine and other small engines, and refueling infrastructure can safely accommodate. We agree with the EPA's conclusion in its first RVO proposal for 2014 and in its current proposal for 2014, 2015, and 2016 that the E10 blendwall is a binding constraint.

We are gravely concerned, however, that despite the Agency's recognition of the blendwall, the 2016 proposal acknowledges that it will be breached nonetheless. Specifically, EPA states that the 2016 RVO "includes volumes of renewable fuel that will require either ethanol use at levels significantly beyond the level of the E10 blendwall, or significantly greater use of non-ethanol renewable fuels than has occurred to date."²

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² Federal Register, Vol. 80, No. 111, Wednesday, June 10, 2015, Proposed Rules (p.33102), *EPA Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017; Proposed Rule*

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Congress will continue its work toward a bipartisan solution to deal with the RFS. As this work continues, it is critical that EPA use its statutory authority to waive EISA's conventional biofuel volume to keep the blending requirements below the E10 blendwall, and to help limit the economic and consumer harm this program has already caused.

Sincerely,



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Bob Goodlatte
Member of Congress



Jim Costa
Member of Congress



Steve Womack
Member of Congress

³ Congressional Budget Office, *The Renewable Fuel Standard: Issues for 2014 and Beyond* (June 2014)

⁴ NERA Economic Consulting, *Economic Impacts Resulting from Implementation of RFS2 Program* (July 2015)

⁵ Charles River Associates, *Impact of the Blend Wall Constraint in Complying with the Renewable Fuel Standard* (November 2011)

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⁷ Energy Information Administration, *Annual Energy Outlook 2014*

⁸ Fuels Institute, *E85: A Market Performance Analysis and Forecast* (2014)

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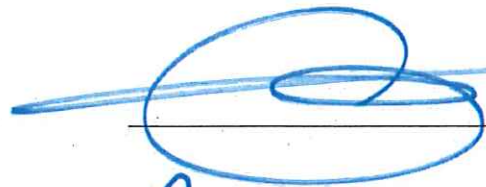
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling**

MURRAY ENERGY CORPORATION, et al.,)	
)	
Plaintiffs,)	
)	Civil Action No. 5:14-CV-00039
v.)	Judge Bailey
)	
SCOTT PRUITT, Administrator,)	
United States Environmental Protection Agency,)	
acting in his official capacity, ¹)	
)	
Defendant.)	

**EPA’S FILING IN COMPLIANCE WITH THIS COURT’S
JANUARY 11, 2017 ORDER**

INTRODUCTION

On January 11, 2017, this Court ordered the United States Environmental Protection Agency (EPA) to (1) prepare and submit a 321(a) evaluation of the coal industry and other entities affected by the rules and regulations affecting the coal mining and power generating industries . . . by no later than July 1, 2017, and to (2) submit evidence . . . that EPA has adopted measures to continuously evaluate the loss and shifts in employment which may result from its administration and enforcement of the Clean Air Act[] by no later than December 31, 2017. Final Order, ECF No. 314 at 26-27. In addition, this Court ordered EPA [t]o submit a comprehensive filing detailing the actions the agency is taking to comply with 321(a) and this Court’s orders within 60 days. *Id.* at 27 (hereinafter Compliance Filing). On February 16, 2017, the parties filed an expedited joint motion to extend the deadlines in the Final Order.

¹ Pursuant to Fed. R. Civ. P. 25(d), Administrator Scott Pruitt is automatically substituted as a party because he is the successor to former Administrator Gina McCarthy, who was named in Plaintiffs Complaint. Catherine McCabe served as Acting Administrator immediately prior to Administrator Pruitt’s confirmation.

Expedited Joint Motion to Extend Deadlines in the January 11 Final Order, ECF No. 326. On February 23, 2017, this Court granted the parties' request to extend the deadline for the Compliance Filing until May 13, 2017,² and otherwise denied the expedited joint motion. Order Granting in Part and Denying in Part the Expedited Joint Motion to Extend Deadlines in the January 11 Final Order, ECF No. 327.

EPA has appealed all aspects of the Final Order, and the Fourth Circuit took the case under submission on May 9, 2017. *Murray Energy Corp. v. EPA*, Lead Case No. 16-2432 (4th Cir.). Subject to the reservations and objections presented to the Fourth Circuit, EPA submits this Compliance Filing to comply with the Final Order.

As explained above, this Court required that the Compliance Filing ☐detail[] the actions the agency is taking to comply with ☐321(a) and this Court's orders. ECF No. 314 at 27. EPA understands this direction to mean that the Agency must explain its plans to comply with this Court's July and December deadlines. The evaluation due by July 1, 2017, has two major subcomponents—a retrospective evaluation of actual ☐coal mines and coal-fired power generators that have closed or reduced employment since January 2009, *id.* at 26 ☐1(a)(iii), and an evaluation of ☐facilities that are at risk of closure or reductions in employment because of EPA's regulations and enforcement actions and associated impacts on communities, families, and subpopulations, *id.* at 26 ☐27 ☐1(a)(i) ☐1(a)(ii) (iv).

In the Final Order, this Court provided additional interpretation of the statute, stating that Section 321(a) ☐requires EPA to answer the particular question of whether the EPA is contributing to specific worker dislocations and plant and mine closures, and that, ☐[t]o comply

² May 13, 2017 was a Saturday.

with §321(a), EPA must both track and monitor the effects of the Clean Air Act and its implementing regulations on employment, and evaluate the cause of specific job dislocations. *Id.* at 8-9 (internal citation omitted). This Court concluded that EPA could employ existing methodologies and analytical tools to achieve compliance, describing with favor a voluntary program jointly administered by EPA and the Department of Labor during the 1970s and early 1980s called the Economic Dislocation Early Warning System (EDEWS). *Id.* at 9.

The EDEWS³ was an information collection and reporting effort in which EPA regional offices maintained contacts with federal, state, and local environmental enforcement offices, and invited individual firms to contact EPA directly when they closed or planned to close a plant and environmental regulations were alleged to be a significant factor in the decision. EPA headquarters consolidated the information collected by the regional offices and communicated it to the Secretary of Labor in a quarterly report. The quarterly reports presented details on the previous quarter's actual and threatened plant closures, including the name and location of each plant, the industry, the actual or threatened date of dislocation, the jobs lost or threatened and total employment, a description of the environmental regulation or enforcement action at issue, and any unique circumstances involved. EPA did not include in the EDEWS plant closures or employment reductions affecting fewer than 25 employees, but otherwise included all plants that firms alleged would have remained unthreatened had it not been for the imposition of environmental regulations, regardless of the number and significance of other financial factors that may have entered into the closure decision. EPA cautioned, however, that many of the plants included in the EDEWS reports likely would have closed in the near term even in the absence of

³ *Hearings before the Subcomms. of the S. Comm. on Appropriations on H.R. 9375*, 95th Cong. 501-03 (1978) (describing "The Origin & Operation of the Economic Dislocation Early Warning System"), <https://babel.hathitrust.org/cgi/pt?id=uc1.b4682130;view=1up;seq=509>.

environmental regulations. EPA also explained that economic impacts were difficult to quantify because many dislocated workers are rehired by the same firm, while some displaced labor shifted into other firms or sectors of the economy. Finally, EPA identified a number of reliability concerns associated with the EDEWS, including the difficulty of obtaining information to substantiate or refute allegations that environmental regulations were a significant factor in a plant closure.

As explained in more detail below, absent relief from the Fourth Circuit, EPA intends to use the EDEWS as guidance in complying with this Court's July deadline. EPA also intends to comply with this Court's December deadline by using the EDEWS as a starting point to develop an ongoing program to conduct facility-level evaluations of closures and employment reductions. EPA maintains its position, however, that "resuming the [EDEWS] . . . would entail enormous costs to EPA and industry with little or no gain in reliable information. United States Response to the October 17, 2016 Memorandum Opinion and Order Requiring Section 321(a) Compliance Plan and Schedule, ECF No. 296 at 10 n.11. Furthermore, EPA continues to have serious concerns about the analytical challenges associated with facility-level evaluations generally. *See id.* at 9-10 (listing challenges). EPA will make best efforts to address those challenges, as time and resources permit, because EPA is committed to ensuring that its work is based on the best available science and technical methods. EPA is also committed to an open, transparent process

that affords sufficient opportunities for public engagement, and that adheres to federal data-quality⁴ and information-collection⁵ requirements and policies.

I. July 1, 2017 Evaluation of Coal Mines and Coal-Fired Power Plants

Under this Court's Final Order, EPA must:

Prepare and submit to the Court a §321(a) evaluation of the coal industry and other entities affected by the rules and regulations affecting the coal mining and power generating industries as expeditiously as practicable and by no later than July 1, 2017, which evaluation shall:

- (i) identify those facilities that are at risk of closure or reductions in employment because of EPA's regulations and enforcement actions impacting coal and/or the power generating industry;
- (ii) evaluate the impacts of the potential loss and shifts in employment which may be attributable to EPA's regulations and enforcement actions impacting coal and/or the power generating industry, including identifying the number of employees potentially affected, the communities that may be impacted, and the reasonably foreseeable impacts on families and industries reliant on coal;
- (iii) identify those coal mines and coal-fired power generators that have closed or reduced employment since January 2009 and, for each, evaluate whether EPA's administration and enforcement of the Clean Air Act contributed to the closure or reduction in employment; and
- (iv) identify those subpopulations at risk of being unduly affected by job loss and shifts and environmental justice impacts.

⁴ See, e.g., Information Quality Act, Pub. L. No. 106-554, 114 Stat. 2763; Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, Final Guidelines (corrected), 67 Fed. Reg. 8452 (Feb. 22, 2002); see also U.S. EPA, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* (Oct. 2002), <https://www.epa.gov/sites/production/files/2015-08/documents/epa-info-quality-guidelines.pdf>.

⁵ See, e.g., Paperwork Reduction Act, 44 U.S.C. §3501-3521; Office of Info. Regulatory Affairs, Office of Mgmt. Budget, Exec. Office of the President, *Frequently Asked Questions*, https://www.reginfo.gov/public/jsp/Utilities/faq.jsp#icr_info (last visited May 15, 2017) (The Paperwork Reduction Act (PRA), which was signed into law in 1980 and reauthorized in 1995, provides the statutory framework for the Federal government's collection, use, and dissemination of information. The goals of the PRA include (1) minimizing paperwork and reporting burdens on the American public and (2) ensuring the maximum possible utility from the information that is collected.).

ECF No. 314 at 26-27.

To comply with this portion of the Final Order, EPA is: (1) assembling a workgroup and establishing a work plan for completing the prescribed evaluation by the July deadline; (2) developing a methodology for evaluating employment impacts at individual coal mines and coal-fired power plants, notwithstanding data gaps and uncertainties; (3) identifying the universe of mines and plants that will be included in the evaluation; and (4) identifying the factors that may have contributed to the actual and potential closures and employment reductions, as well as associated impacts. This workgroup consists of over 80 EPA staff, including economists and program analysts from EPA's Office of Policy and Office of Air and Radiation, and attorneys in EPA's Office of General Counsel and Office of Enforcement and Compliance Assurance.

In accordance with the Final Order, EPA's coal-industry evaluation will focus on employment impacts at the facility level, which is a more granular approach than EPA generally uses in its regulatory analyses of national, regional, and sector-wide economic impacts. While EPA is using the EDEWS approach as guidance for this evaluation, EPA cannot acquire information related to plant closures and employment reductions through interactions with state and local governments or firms by the July deadline due to the requirements of the Paperwork Reduction Act (PRA) of 1995. *See infra* at 13. EPA is instead undertaking a significant data-gathering effort by utilizing publicly available⁶ information on facilities in the coal-mining and coal-fired-generation industries, compiling that information, and then conducting a qualitative assessment of the factors that may have contributed to actual or potential closures or reductions in employment.

⁶ At this time, EPA has not identified any proprietary data, such as confidential business information (CBI), that has been comprehensively collected and that would be useful for the purpose of conducting facility-level evaluations.

To identify coal mines that have closed or reduced employment since January 2009, EPA is relying on publicly available data from the U.S. Mine Safety and Health Administration (MSHA), an agency within the Department of Labor. For the purpose of enforcing mine-worker safety, MSHA collects employment data from entities that engage not just in coal mining, but in the work of preparing coal.⁷ These entities include mines that produce coal, as well as other types of facilities, such as coal-preparation facilities, coal transshipment facilities, and portable operations (e.g., portable augers). They submit quarterly employment data to MSHA using Form 7000-2,⁸ including the average number of workers employed at each entity. Due to the large number of coal mines and related entities in the United States (2,639 steam-coal mines had on-site employment in one or more years from 2009 to 2016)⁹ and the fluctuating nature of employment in this sector (e.g., workers are routinely reallocated across mines), EPA is following a methodological approach similar to that used in the EDEWS of evaluating only those entities that experienced dislocations of 25 jobs or more from January 2009 to December 2016. At this time, EPA has identified 1,099 steam-coal mining entities that meet this criterion. For the remaining steam-coal mining entities that experienced smaller reductions in employment, EPA will list such entities and provide a general overview of employment trends and impacts, but will not conduct individual facility-level evaluations.

⁷ 30 C.F.R. § 50.2(b).

⁸ See Mine Safety and Health Admin., U.S. Dep't of Labor, *Quarterly Mine Employment and Coal Production Report*, <https://www.msha.gov/support-resources/forms-online-filing/2015/04/15/quarterly-mine-employment-and-coal-production> (last visited May 15, 2017).

⁹ Steam coal includes bituminous, subbituminous, and lignite coals, which are burned in coal-fired power plants to produce electricity. Some coal mines produce anthracite coal, which is used for steelmaking and other industrial processes. Due to significant time and resource constraints, EPA will address employment impacts at anthracite coal mines as part of the comprehensive program required by this Court's December deadline.

To identify coal-fired power plants that have closed or reduced employment since January 2009, EPA is relying on publicly available data from the U.S. Energy Information Administration (EIA), the Federal Energy Regulatory Commission (FERC), and the U.S. Department of Agriculture's Rural Utilities Service (RUS). In contrast to mines, annual employment information is not available for all power plants in the United States, although it is available for many. FERC Form No. 1¹⁰ is a comprehensive financial and operating report submitted annually by major electric utilities that provide rate-based electricity. FERC Form No. 1 solicits total annual employment information for power plants with greater than 25 megawatts of installed capacity. Similarly, power plants that receive insured loans and loan guarantees through the RUS must report their total employment annually on the Financial and Operating Report Electric Power Supply form.¹¹ Additionally, EPA is attempting to identify those power plants with coal-fired units that have closed or converted to another fuel since January 2009 by relying on publicly available data reported to the EIA using Form 860.¹² At this time, EPA has invested significant effort in reviewing these data sources and identifying coal-fired power plants where at least one operable electric generating unit retired or converted some coal-fired capacity to other fuels between January 2009 and December 2016, or that reduced employment over this time period.

¹⁰ See Fed. Energy Regulatory Commission, U.S. Department of Energy, *FERC Financial Report, FERC Form No. 1: Annual Report of Major Electric Utilities, Licensees, and Others and Supplemental Form 3-Q: Quarterly Financial Report*, www.ferc.gov/docs-filing/forms/form-1/form-1.pdf (last visited May 15, 2017).

¹¹ See Rural Dev., U.S. Department of Agric., *Financial and Operating Report Electric Power Supply* (Rev. 2010), https://www.rd.usda.gov/files/OpRpt_PS_2010_Current.pdf.

¹² See U.S. Energy Info. Admin., *Form EIA-860 detailed data* (Oct. 6, 2016), <https://www.eia.gov/electricity/data/eia860/>.

To identify coal-fired power plants that may be at risk of closing or reducing employment in the near future, EPA is using publicly available information regarding retirement plans, which is also available from EIA Form 860. Because comparable data is not available for coal mines,¹³ EPA will make best efforts to link these power plants to the coal mines that have consistently supplied them with coal in recent years by using data collected by the EIA on Form 923.¹⁴ The utility of this approach to identifying at-risk coal mines may be limited, however, because power plants often purchase coal from multiple coal mines or through brokers, in which case the original source mine is unknown or difficult to ascertain, and coal mines often have a portfolio of customers that can vary from year to year. Nevertheless, absent a peer-reviewed methodology for identifying at-risk facilities, EPA believes that this approach, despite its limitations, is the best option for timely complying with this Court's Final Order. EPA is aware that identifying a coal mine as "at risk" could in itself create additional financial risk to the owners, suppliers, and employees of that mine.¹⁵ Consequently, EPA will seek to minimize that risk while complying with the requirements of the Final Order.

To evaluate whether EPA's administration and enforcement of the Clean Air Act may have contributed to any of the actual and potential closures and employment reductions, EPA will rely on official statements made by facility owners (e.g., annual reports, SEC filings, and

¹³ In certain circumstances, coal-mine owners may be required to submit notices under the Worker Adjustment and Retraining Notification ("WARN") Act to MSHA. WARN Act requirements are limited to firms of a certain size, however, and these firms are usually only required to issue notices 60 days in advance, which limits the utility of the notices in identifying potential closures.

¹⁴ See *U.S. Energy Info. Admin., Form EIA-923 detailed data* (Apr. 26, 2017), <https://www.eia.gov/electricity/data/eia923/>.

¹⁵ For example, an "at risk" designation could affect a facility's credit rating, making it more difficult for the facility to obtain loans from lenders. Similarly, an "at risk" designation could impede a facility's ability to attract skilled workers, who may be more inclined to seek employment at a competitor not designated as "at risk."

press releases) and information gathered through news-collection services (e.g., Newsbank) and other sources (e.g., WARN Act notices). EPA emphasizes that these statements cannot be fully corroborated through independent investigation or financial analysis in the time provided by the Final Order. For each facility, EPA is also consulting its own publicly available enforcement databases (e.g., EPA's ECHO database)¹⁶ and, where appropriate, databases that contain information related to the enforcement of health and safety regulations (e.g., databases maintained by MSHA for coal mines) and state and local regulations. Based on work done to date, EPA estimates that each draft coal-mine and power-plant evaluation will take between one and five hours to complete, depending on the amount of information available.

For the at-risk facilities, EPA is gathering information on current economic, health, and environmental conditions in the areas in which the facilities are located in order to evaluate potential impacts on communities, families and industries reliant on coal, and those subpopulations at risk of being unduly affected by job loss and shifts from environmental justice impacts. ECF No. 314 at 26-27. To do this, EPA is relying on publicly available data from the U.S. Census Bureau, the U.S. Bureau of Labor Statistics (BLS), the Centers for Disease Control and Prevention, EPA's EJSCREEN tool,¹⁷ and other relevant sources. Employment-

¹⁶ ECHO stands for Enforcement and Compliance History Online. See U.S. EPA, *Learn More About ECHO*, <https://echo.epa.gov/resources/general-info/learn-more-about-echo> (last updated Feb. 8, 2017). The database provides integrated compliance and enforcement information for about 800,000 regulated facilities nationwide. *Id.*

¹⁷ EJSCREEN is EPA's Environmental Justice Screening and Mapping Tool, which is used for displaying and combining nationally consistent, publicly available environmental and demographic data at various geographic scales. See U.S. EPA, *EJSCREEN: Environmental Justice Screening and Mapping Tool*, <https://www.epa.gov/ejscreen> (last updated Dec. 19, 2016).

related indicators are generally available by Labor Market Area (LMA),¹⁸ whereas environmental and health indicators are typically available at the county or state level.

In regards to the format of the July submission, EPA expects that each facility-specific evaluation will present facility-related information, a narrative summarizing the information that EPA found regarding job losses and shifts and the factors that may have contributed to the actual or potential closure or reduction in employment, and EPA's best assessment, in light of available data and methodologies, of whether EPA's administration and enforcement of the Clean Air Act is among those factors. For at-risk facilities, the evaluations will also include the community-impacts information discussed above. Based on work done to date, EPA estimates that each draft community-impacts evaluation will take between two and five hours to complete, depending on the amount of information available.

Finally, EPA will include in the submission to this Court sector-level overviews of the coal-mining and electricity-generating industries that discuss recent regulatory requirements, labor trends, and major factors affecting the cost of extracting coal and the electricity sector's demand for coal. Given the numerous analytical limitations and challenges associated with a facility-level approach, EPA believes that concurrent sector-level overviews are important to provide context for the broader economic and regulatory forces that affect employment in these industries. EPA is relying on external market assessments, publicly available market and survey data, and recent scientific research to complete the overviews.

¹⁸ LMAs are U.S. Office of Management and Budget (OMB)-defined metropolitan and micropolitan areas, as well as BLS-defined small labor market areas. LMAs represent geographic areas where individuals can live and work within a reasonable distance. They can include multiple counties and can cross state lines. They are non-overlapping and geographically exhaustive for the entire United States. Many LMAs are county equivalents.

II. Measures to Continuously Evaluate Losses and Shifts in Employment

Under this Court's Final Order, EPA also must:

[A]s expeditiously as practicable, but by no later than December 31, 2017, submit evidence to the Court demonstrating that EPA has adopted measures to continuously evaluate the loss and shifts in employment which may result from its administration and enforcement of the Clean Air Act, including such rulemakings, guidance documents, and internal policies as necessary to demonstrate that EPA has begun to comply with §321(a) and will continue to do so going forward.

ECF No. 314 at 27.

To comply with this portion of the Final Order, EPA is assembling a workgroup and establishing a work plan to adopt measures by the December deadline. This workgroup currently consists of over 30 EPA staff, including economists and program analysts from EPA's Office of Policy and Office of Air and Radiation, attorneys in EPA's Office of General Counsel and Office of Enforcement and Compliance Assurance, and assistance from other EPA headquarters offices as needed.

The first step in EPA's work plan is to develop a system for collecting facility-level information. As explained above, the EDEWS program relied heavily on assistance from state and local authorities, as well as direct communication with firms, to identify facilities potentially threatened by environmental regulations. Each EPA regional office had a staff member responsible for maintaining contacts with federal, state, and local environmental enforcement offices, as well as local departments of commerce; reading the local press; and serving as the regional point-of-contact for individual firms that contacted EPA regarding closures or plans to close. For each facility, the regional staff member collected the facility's name, location, and industry; the date (if known) of the closure or reduction in employment; the environmental regulation or enforcement action at issue; evidence in support of the firm's claims (e.g., abatement cost information); and any unique circumstances involved.

For EPA to implement a similar information-collection system today, either by directly soliciting information from firms or by indirectly obtaining information with the assistance of state and local entities, EPA must comply with the PRA.¹⁹ Generally, to comply with the PRA, EPA must seek public comment on proposed information collections and submit proposed information collections to OMB for review and approval. Any information collection request (ICR) submitted to OMB for review and approval must include a description of the collection and its intended use, as well as an estimate of the time and cost burdens the ICR will place on the public. 44 U.S.C. §3506(c)(1)(a); 5 C.F.R. §1320.8(b)–(c). The ICR may also include an information collection instrument (e.g., a form, survey, script, etc.) and supporting documentation that addresses matters like reporting frequency, the format of the electronic collection system, access issues, and CBI concerns. The ICR process requires two Federal Register notices. The first notice announces EPA's plan to submit an ICR to OMB and solicits comments for a period of 60 days. 44 U.S.C. §3506(c)(2)(a); 5 C.F.R. §1320.8(d). The second notice announces that the ICR has been submitted to OMB and solicits comment for 30 days. 44 U.S.C. §3507(a)(1)(D)–(b); 5 C.F.R. §1320.10(a). OMB has 60 days from either the date on which the ICR is submitted for review or the date on which the second notice is published, whichever is later, to approve, disapprove, or require changes to the ICR. 44 U.S.C. §3507(c)(2); 5 C.F.R. §1320.10(b). The total ICR process takes approximately six to nine months from beginning to end.²⁰

¹⁹ Congress enacted the PRA in 1980, nine years after EPA and the Department of Labor started EDEWS, and substantially revised it in 1995.

²⁰ See Office of Info. Regulatory Affairs, Office of Mgmt. Budget, Exec. Office of the President, *Questions and Answers When Designing Surveys for Information Collections* 3 (Jan. 2006), https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/pmc_survey_guidance_2006.pdf

The second step in EPA's work plan is to develop a process for compiling and evaluating the information once it has been collected. In broad terms, this process will likely be similar to the one that EPA is using to conduct facility-level evaluations of coal mines and coal-fired power plants by the July deadline, except that the process will be ongoing and subject to improvements and adjustments over time. While EPA will continue to evaluate actual and potential closures and reductions in employment for the coal industry, EPA will also evaluate additional sectors in the economy that may be affected by Clean Air Act regulations and enforcement actions.²¹ EPA intends to compile the facility-level information necessary to conduct evaluations into a database and review the information for quality-control purposes. Finally, to the extent practicable, EPA will seek to address the serious analytical challenges and limitations associated with the EDEWS methodology by using a transparent process that effectively engages the public and outside experts.

The third step in EPA's work plan is to determine whether and how the Agency will disseminate the evaluations to the public. While Section 321(a) does not require EPA to disclose its evaluations to the public, EPA is nevertheless considering the feasibility and benefits of various options for public dissemination. As described above, EPA used the EDEWS to generate quarterly reports that were submitted to the Department of Labor and the Small Business Administration to aid those agencies in providing unemployment assistance and loans for abatement equipment, respectively. EPA also distributed copies of the quarterly reports to about

(A six month period, from the time the agency completes the ICR to OMB approval, is fairly common for planning purposes but varies considerably across agencies depending on internal review procedures.).

²¹ EPA notes that, while there is a relatively large amount of economic data regarding the coal-mining and electricity-generating sectors that is routinely generated and submitted to various federal, state, and local agencies, comparable data is not readily available for many other sectors subject to Clean Air Act regulation.

100 people outside the Agency, ranging from professors at universities, to companies on a mailing list, to other Federal agencies.²² The Council on Environmental Quality (CEQ) also included EDEWS information in several of its annual reports during the 1970s.²³ At this time, EPA has not determined whether any of these historical examples would be an appropriate way to disseminate evaluations today.

CONCLUSION

While reserving all rights and without prejudice to the EPA's appeal of this Court's Final Order, the EPA responds to the Final Order and submits, as directed, this Compliance Filing.

DATED: May 15, 2017

Respectfully Submitted,

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²² See Nat'l Comm'n on Supplies and Shortages, *Information Systems Studies* 401 (Dec. 1976), <https://babel.hathitrust.org/cgi/pt?id=uc1.31210024827345;view=1up;seq=415>.

²³ See Council on Env'tl. Quality, Exec. Office of the President, *Annual Environmental Quality Reports*, https://ceq.doe.gov/ceq-reports/annual_environmental_quality_reports.html (last visited May 15, 2017). In 1995, Congress eliminated the requirement that CEQ create and publish the annual reports to reduce paperwork in government. See *id.*

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BETSY STEINFELD JIVIDEN
Acting United States Attorney for the
Northern District of West Virginia

/s/ Erin Carter Tison
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OF COUNSEL:
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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling**

MURRAY ENERGY CORPORATION, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 5:14-CV-00039
)	Judge Bailey
SCOTT PRUITT, Administrator,)	
United States Environmental Protection Agency,)	
acting in his official capacity,)	
)	
Defendant.)	
)	

CERTIFICATE OF SERVICE

I, Erin Carter Tison, hereby certify that on this 15th day of May, 2017, the foregoing EPA s Filing in Compliance With This Court s January 11, 2017 Order was filed using the CM/ECF system, which will cause a copy to be served upon counsel of record.

/s/ Erin Carter Tison
ERIN CARTER TISON (WV Bar No. 12608)
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 2, 2014

OFFICE OF
AIR AND RADIATION

The Honorable Ron D. DeSantis
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman DeSantis:

Thank you for your letter of May 22, 2014 to Administrator Gina McCarthy, requesting that the U.S. Environmental Protection Agency include a 120-day comment period on our proposed Clean Power Plan, also known as the Carbon Pollution Guidelines for Existing Power Plants. The Administrator has asked me to respond on her behalf.

As you know, the EPA conducted unprecedented outreach while developing this proposal. We met with stakeholders from around the country, including representatives from state and local governments, electric utilities, and civil society. Among the many creative ideas and constructive comments offered were requests similar to yours, to ensure that the comment period allowed the public sufficient time to provide meaningful input on this proposed rule.

Recognizing that the proposal asks for comment on a range of issues, some of which are complex and novel, the EPA has decided to propose this rule with a 120-day comment period. This will allow the EPA to solicit advice and information from the many stakeholders and citizens who we expect will be interested in this rulemaking, giving us the best possible information on which to base a final rule. The proposed rule, as well as information about how to comment and supporting technical information, are available online at: <http://www.epa.gov/cleanpowerplan>. Comments on the proposed guidelines should be identified by Docket ID No. EPA-HQ-OAR-2013-0602.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Cheryl Mackay in the EPA's Office of Congressional and Intergovernmental Relations at mackay.cheryl@epa.gov or (202) 564-2023.

Sincerely,

A handwritten signature in blue ink, which appears to read "Janet G. McCabe", is positioned above the typed name.

Janet G. McCabe
Acting Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 24 2014

OFFICE OF
AIR AND RADIATION

The Honorable Ron DeSantis
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman DeSantis:

Thank you for your letter dated October 30, 2013, to U.S. Environmental Protection Agency Administrator Gina McCarthy regarding the 2014 volume requirements under the Renewable Fuel Standard (RFS) program. The Administrator has asked me to respond to you on her behalf.

On November 29, 2013, the EPA published in the *Federal Register* a proposed rule that would establish the 2014 RFS volume standards. In developing the proposed volumes, the EPA used the most recent data available and took into consideration multiple factors. Our analysis included an evaluation of both the expected availability of qualifying renewable fuels as well as factors that, in some cases, limit supplying those fuels to the vehicles and equipment that can consume them. On the basis of our analysis, we proposed to reduce the required volumes from statutory levels for 2014 for cellulosic biofuel, advanced biofuel, and total renewable fuel. We proposed to maintain the same volume for biomass-based diesel for 2014 and 2015 as was adopted for 2013, but we have requested comment on whether to raise the biomass-based diesel volume requirement.

I want to emphasize that this is a proposal, and that the EPA has requested comment on many aspects of the proposed rule, including the methodology for determining volumes. The EPA also expects to receive additional data before finalizing the rule. We will take your input under consideration as we, in conjunction with the U.S. Department of Agriculture and the U.S. Department of Energy, work towards finalizing this rule. Your letter has been placed in the rulemaking docket.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Josh Lewis in the EPA's Office of Congressional and Intergovernmental Relations at lewis.josh@epa.gov or (202) 564-2095.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet G. McCabe", is located below the "Sincerely," text.

Janet G. McCabe
Acting Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 23 2015

OFFICE OF
AIR AND RADIATION

The Honorable Ronald D. DeSantis
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman DeSantis:

Thank you for your letter of November 4, 2015, to U.S. Environmental Protection Agency Administrator Gina McCarthy, regarding your concerns that the proposed standards for 2014 - 2016 under the Renewable Fuel Standard (RFS) program fall short of the statutory targets. The Administrator has asked me to respond to you on her behalf.

Under the Clean Air Act, as amended by the Energy Independence and Security Act of 2007, the EPA is required to set annual standards for the RFS program each year. The statute requires the EPA to establish annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuels that apply to gasoline and diesel produced or imported in a given year.

In our June 10, 2015, proposal we made a preliminary determination that the market would experience significant uncertainty if the EPA were to ignore the constraints on supply and set the standards at the statutory targets, as we expect that there would be widespread shortfalls in supply under those circumstances. The proposal sought to balance two dynamics: Congress's clear intent to increase renewable fuels over time to address climate change and increase energy security, and real-world circumstances that have slowed progress towards such goals. In order to provide the certainty that investors and others in the market need, we proposed using the tools Congress provided to make adjustments to the law's volume targets. Though we proposed using the authority provided by Congress, we nevertheless proposed standards for cellulosic biofuel, advanced biofuel, and total renewable fuel that would result in ambitious, achievable growth in biofuels.

We held a public hearing on the proposal on June 25, 2015, in Kansas City, Kansas, where over 200 people provided testimony. Further, we received over 670,000 comments from the public comment period, which closed on July 27, 2015. We are taking those comments, as well as the thoughts you provided in your letter, under consideration as we prepare the final rulemaking which we intend to finalize by November 30, 2015.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Patricia Haman in the EPA's Office of Congressional and Intergovernmental Relations at haman.patricia@epa.gov or (202) 564-2806.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet G. McCabe". The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

Janet G. McCabe
Acting Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV - 3 2016

OFFICE OF
AIR AND RADIATION

The Honorable Ron DeSantis
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman DeSantis:

Thank you for your letter of June 8, 2016, to U.S. Environmental Protection Agency Administrator Gina McCarthy, regarding the EPA's final rule setting the 2016 standards for the Renewable Fuel Standard (RFS) program and concerns regarding E15. The Administrator has asked me to respond to you on her behalf.

As you know, the EPA is required under the Clean Air Act to set annual standards for the RFS program each year. The statute requires the EPA to establish annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuels that apply to gasoline and diesel produced or imported in a given year. However, it is important to remember that the statute did not set a "standard" or requirement for ethanol.

In the final applicable standards for 2016 that we issued on November 30, 2015 (80 FR 77419, December 14, 2015), we finalized volumes that will require significant growth in overall renewable fuel production and use over historical levels, consistent with Congress's clear intent to increase renewable fuels over time to address climate change and increase energy security. While ethanol is currently the predominant renewable fuel used to satisfy the standards, obligated parties have other options for demonstrating compliance. The market will ultimately determine whether the required RFS volumes are met with ethanol, either as E10 or higher-level ethanol blends, or with non-ethanol renewable fuels. Other renewable fuels, such as biodiesel and renewable diesel, can and are being used to meet the overall volume goals of the program.

Regarding your concerns over E15 misfueling, we believe the suite of measures (misfueling prohibition, labeling, etc.) finalized in the E15 Misfueling Mitigation Rule are sufficient, but encourage fuel providers to do more as appropriate for their circumstances.⁸³ We considered other misfueling mitigation measures in developing the final rule (for example, distinctive nozzle grips or keypad/touch screen information/confirmation), but we did not finalize any of them given the lack of data on their effectiveness and uncertainties about when, where, and how E15 will be marketed (e.g., pump types, pricing). The final label was developed in consultation with the Federal Trade Commission (FTC).

⁸³ See 76 *Federal Register* 44406, July 25, 2011.

Based on this consultation, the specific language on the label was chosen to draw consumers' attention and effectively communicate that care must be taken in fueling with E15 without unduly discouraging appropriate use of E15. We will continue to work with stakeholders as E15 is introduced to evaluate the effectiveness of the required measures. We also highly encourage affected stakeholders to participate in the E15 Education and Outreach Coalition to help improve consumer awareness on the appropriate use of E15.⁸⁴

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Patricia Haman in the EPA's Office of Congressional and Intergovernmental Relations at haman.patricia@epa.gov or at (202) 564-2806.

Sincerely,

A handwritten signature in blue ink, appearing to read "Janet G. McCabe", with a stylized flourish at the end.

Janet G. McCabe
Acting Assistant Administrator

⁸⁴ For more information, see the following website: <http://www.e15fuel.org/>.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 01 2017

The Honorable Ron DeSantis
U.S. House of Representatives
Washington, DC 20515

Dear Congressman DeSantis:

This responds to your letter dated April 7, 2017, to the Attorney General and the Administrator of the Environmental Protection Agency (EPA) regarding *Murray Energy Corp. v. McCarthy* (4th Cir.). Because this is a matter in litigation, I have been asked to respond on behalf of both the Department of Justice and EPA. We are sending similar responses to the other signatories of your letter.

This case involves a challenge by plaintiff coal companies who alleged that EPA failed to “conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the [Clean Air Act (CAA)].” 42 USC 7621(a). The United States District Court for the Northern District of West Virginia granted summary judgment to the plaintiffs, holding, among other things, that section 321(a) of the CAA imposes a non-discretionary duty on EPA under the CAA’s citizen suit provision, CAA section 304, 42 USC 7604. The district court also issued an injunction directing EPA to perform, among other things, a retrospective analysis of the Clean Air Act’s effects on coal- and electric power-industry employment since 2009, and to develop specific procedures for conducting future evaluations. *Murray Energy Corp. v. McCarthy*, No. 5:14-CV-39, 2016 WL 6083946 (N.D.W. Va. Oct. 17, 2016) and 2017 WL 150511 (N.D.W. Va. Jan. 11, 2017).

The United States has taken the position that this suit does not meet the requirements that CAA section 304 imposes on all litigants. The United States appealed on that and other issues, and on May 9, the Fourth Circuit Court of Appeals heard oral argument in this case. In the meantime, EPA is complying with the district court’s order and on May 15 filed the attached statement detailing the actions EPA is taking to do so.

The Honorable Ron DeSantis
Page Two

As you are no doubt aware, longstanding Department of Justice policy prohibits discussion of matters in litigation other than public information. We can assure you, however, that we appreciate and value your views.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel R. Ramer". The signature is fluid and cursive, with a large initial "S" and a long, sweeping underline.

Samuel R. Ramer
Acting Assistant Attorney General

Enclosure